UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 21, 2017 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.

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1. 13-24810-D-7 SANDRA DAVIS — CONTINUED MOTION TO AVOID LIEN
TAW-2 — OF UNIFUND CCR PARTNERS
4-24-17 [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 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.

2. 15-23511-D-7 SCB-2 — SCOTT COURTNEY — MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM FOR CREDITOR JENNIFER BAKER, DEBTOR'S SPOUSE 5-24-17 [83]

3. 14-25816-D-7 FWP-1 — DEEPAL WANNAKUWATTE — OBJECTION TO CLAIM OF GARY AND JUDY QUATTRIN, CLAIM NUMBER 44 5-8-17 [1162]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Gary and Judy Quattrin (Claim No. 44), and the claim will be disallowed in any amount over $287,500.29. Moving party is to submit an appropriate order. No appearance is necessary.

4. 14-25816-D-7 FWP-2 — DEEPAL WANNAKUWATTE — OBJECTION TO CLAIM OF RAMONA DAHNERT, CLAIM NUMBER 58 5-8-17 [1167]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to claim of Ramona Dahnert (Claim No. 58). Moving party is to submit an appropriate order. No appearance is necessary.

5. 14-25816-D-7 FWP-3 — DEEPAL WANNAKUWATTE — OBJECTION TO CLAIM OF SAMUEL ROTH PENSION PLAN, CLAIM NUMBER 97 5-8-17 [1172]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Samuel Roth Pension Plan (Claim No. 97), and the claim will be disallowed in any amount over $317,333.43. Moving party is to submit an appropriate order. No appearance is necessary.

6. 14-25816-D-7 FWP-4 — DEEPAL WANNAKUWATTE — OBJECTION TO CLAIM OF ASHLEY BACKMAN, CLAIM NUMBER 105 5-8-17 [1177]

Final ruling:

This is the plan administrator's objection to the claim of Ashley Backman (the "Claimant"), Claim No. 105 on the court's claims register. Although the moving party served the Claimant at the address on her proof of claim, the moving party failed to also serve the Claimant at the different address listed for her on the debtor's schedules, as required by LBR 3007-1(c). Accordingly, the court will continue the hearing to July 5, 2017, at 10:00 a.m., the moving party to file and serve a notice of continued hearing on the Claimant at both addresses and to serve the motion and supporting documents on the Claimant at the address on the debtor's schedules. The notice of continued hearing shall advise the Claimant that no written opposition is required and that opposition may be presented at the hearing.

The hearing will be continued by minute order. No appearance is necessary on June 21, 2017.

7. 14-25816-D-7 FWP-5 — DEEPAL WANNAKUWATTE — OBJECTION TO CLAIM OF MARK A. PETERSEN AND MARGARET A. HATCHER, CLAIM NUMBER 106 5-8-17 [1182]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the Chapter 7 Trustee has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to claim of Mark A. Petersen and Margaret A. Hatcher (Claim No. 106). Moving party is to submit an appropriate order. No appearance is necessary.

8. 14-25816-D-7 FWP-6 — DEEPAL WANNAKUWATTE — OBJECTION TO CLAIM OF REBECCA FRAME, CLAIM NUMBER 31 5-8-17 [1187]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection the Chapter 7 Trustee has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Rebecca Frame (Claim No. 31), and the claim will be disallowed in any amount over $40,000. Moving party is to submit an appropriate order. No appearance is necessary.

9. 14-25816-D-7 FWP-7 — DEEPAL WANNAKUWATTE — OBJECTION TO CLAIM OF ROBIN SIEBERS AND JANE SIEBERS, CLAIM NUMBER 102 5-8-17 [1192]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the Chapter 7 Trustee has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Robin Siebers and Jane Siebers (Claim No. 102), and the claim will be disallowed in any amount over $429,806.95. Moving party is to submit an appropriate order. No appearance is necessary.

10. 16-28018-D-7 CSR-3 JSM ENTERPRISES, INC. VS. — TERRENCE/NANCIE HOFMANN — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-19-17 [82]

11. 14-25820-D-11 FWP-47 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION FOR OBJECTION TO SCHEDULED CLAIM OF FOLSOM LAKE BANK 5-8-17 [1159]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the scheduled claim of Folsom Lake Bank. Moving party is to submit an appropriate order. No appearance is necessary.

12. 14-25820-D-11 FWP-48 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION FOR OBJECTION TO SCHEDULED CLAIM OF MEDLINE INDUSTRIES, INC. 5-8-17 [1163]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the scheduled claim of Medline Industries, Inc. Moving party is to submit an appropriate order. No appearance is necessary.

13. 14-25820-D-11 FWP-49 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF CASHLINE FUNDING INC., CLAIM NUMBER 100 5-8-17 [1167]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to claim of Cashline Funding, Inc. (Claim No. 100). Moving party is to submit an appropriate order. No appearance is necessary.

14. 14-25820-D-11 FWP-50 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF KATHERINE ANN GALLI, CLAIM NUMBER 23 5-8-17 [1172]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to claim of Katherine Ann Galli (Claim No. 23) as a secured claim and the claim will be allowed as a general unsecured claim. Moving party is to submit an appropriate order. No appearance is necessary.

15. 14-25820-D-11 FWP-52 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF ARLESS BOTTA, CLAIM NUMBER 44 AND/OR OBJECTION TO CLAIM OF ARLESS BOTTA, CLAIM NUMBER 98 5-8-17 [1182]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claims of Arless Botta. Claim No. 98 will be disallowed in its entirety and Claim No. 44 will be disallowed in any amount over $80,000. Moving party is to submit an appropriate order. No appearance is necessary.

16. 14-25820-D-11 FWP-53 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF GABRIELLE KRUEGER, CLAIM NUMBER 2 AND/OR OBJECTION TO CLAIM OF GABRIELLE KRUEGER, CLAIM NUMBER 20 5-8-17 [1187]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claims of Gabrielle Krueger. Claim No. 2 will be disallowed in its entirety and Claim No. 20 will be disallowed in any amount over $180,000. Moving party is to submit an appropriate order. No appearance is necessary.

17. 14-25820-D-11 FWP-54 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF GEORGE P. WILBUR, CLAIM NUMBER 76 5-8-17 [1192]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of George P. Wilbur. Claim No. 76 will be disallowed in its entirety and Claim No. 16 will be disallowed in any amount over $31,167.49. Moving party is to submit an appropriate order. No appearance is necessary.

18. 14-25820-D-11 FWP-55 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF NIHAL FERNANDO, CLAIM NUMBER 71 5-8-17 [1197]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Nihal Fernando (Claim No. 71), and the claim will be disallowed in any amount over $110,000. Moving party is to submit an appropriate order. No appearance is necessary.

19. 14-25820-D-11 FWP-56 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF DAVID WELLENBROCK, CLAIM NUMBER 14 5-8-17 [1202]

Tentative ruling:

The court will use this hearing as a status conference.

20. 14-25820-D-11 FWP-57 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF JOHN AND DIANE BANCHERO, CLAIM NUMBER 21 5-8-17 [1207]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of John and Diane Banchero (Claim No. 21), and the claim will be disallowed in any amount over $1,366,985.82. Moving party is to submit an appropriate order. No appearance is necessary.

21. 14-25820-D-11 FWP-58 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF DENNIS M. DELUCIO AND KATHRYN M. DELUCIO, CLAIM NUMBER 26 5-8-17 [1222]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Dennis M. Delucio and Kathryn M. Delucio (Claim No. 26), and the claim will be disallowed in any amount over $930,000. Moving party is to submit an appropriate order. No appearance is necessary.

22. 14-25820-D-11 FWP-59 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF GLENN DELUCIO, CLAIM NUMBER 32 5-8-17 [1212]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Glenn Delucio (Claim No. 32), and the claim will be disallowed in any amount over $62,000. Moving party is to submit an appropriate order. No appearance is necessary.

23. 14-25820-D-11 FWP-60 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF JOHN VICTOR CRISAN, CLAIM NUMBER 49 5-8-17 [1217]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of John Victor Crisan (Claim No. 49), and the claim will be disallowed in any amount over $185,000. Moving party is to submit an appropriate order. No appearance is necessary.

24. 14-25820-D-11 FWP-61 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF RYAN ASHLEY, CLAIM NUMBER 50 5-8-17 [1227]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Ryan Ashley (Claim No. 50), and the claim will be disallowed in any amount over $248,191.98. Moving party is to submit an appropriate order. No appearance is necessary.

25. 14-25820-D-11 FWP-62 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF ROBERT BUCCOLA, CLAIM NUMBER 42 5-8-17 [1232]

Final ruling:

This is the plan administrator's objection to the claim filed in this case as Claim No. 42. By minute order filed June 8, 2017, the court granted the claimant's motion to withdraw the claim. As a result, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

26. 14-25820-D-11 FWP-63 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF BERLE AND CAROL CRISP FAMILY TRUST, CLAIM NUMBER 52
5-8-17 [1237]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Berle and Carol Crisp Family Trust (Claim No. 52), and the claim will be disallowed in any amount over $577,461.39. Moving party is to submit an appropriate order. No appearance is necessary.

27. 14-25820-D-11 FWP-64 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF STEPHEN AND DEANNA GREEN, CLAIM NUMBER 3
5-8-17 [1242]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Stephen and Deanna Green (Claim No. 3), and the claim will be disallowed in any amount over $101,936. Moving party is to submit an appropriate order. No appearance is necessary.

28. 14-25820-D-11 FWP-67 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF THOMAS KIM, CLAIM NUMBER 17
5-8-17 [1257]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Thomas Kim (Claim No. 17), and the claim will be disallowed in any amount over $953,000. Moving party is to submit an appropriate order. No appearance is necessary.

29. 14-25820-D-11 FWP-68 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF ELLEN KARLSTAD, CLAIM NUMBER 18
5-8-17 [1262]

Final ruling:

This is the plan administrator's objection to the claim filed in this case as Claim No. 18. The objection has been resolved by stipulation of the parties, which has been approved by the court. The matter will be removed from calendar.

30. 14-25820-D-11 FWP-69 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF MANFRED F. ANGSTENBERGER AND SHEILA COX ANGSTENBERGER, CLAIM NUMBER 19
5-8-17 [1269]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Manfred F. Angstenberger and Sheila Cox Angstenberger (Claim No. 19), and the claim will be disallowed in any amount over $1,617,239.60. Moving party is to submit an appropriate order. No appearance is necessary.

31. 14-25820-D-11 FWP-70 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF WILLIAM AND JANICE HENDERSON, CLAIM NUMBER 24
5-8-17 [1274]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of William and Janice Henderson (Claim No. 24), and the claim will be disallowed in any amount over $153,756. Moving party is to submit an appropriate order. No appearance is necessary.

32. 14-25820-D-11 FWP-71 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF ARGO PARTNERS, CLAIM NUMBER 31
5-8-17 [1279]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Argo Partners (Claim No. 31), and the claim will be disallowed in any amount over $191,500. Moving party is to submit an appropriate order. No appearance is necessary.

33. 14-25820-D-11 FWP-72 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF REBECCA BOSSART, CLAIM NUMBER 33
5-8-17 [1284]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Rebecca Bossart (Claim No. 33), and the claim will be disallowed in any amount over $8,000. Moving party is to submit an appropriate order. No appearance is necessary.

34. 14-25820-D-11 FWP-73 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF PENSCO TRUST CO. LTD. FBO DONALD L. SCHREUDER IRA, CLAIM NUMBER 37
5-8-17 [1289]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Pensco Trust Co. Ltd. fbo Donald L. Schreuder IRA (Claim No. 37), and the claim will be disallowed in any amount over $237,771.05. Moving party is to submit an appropriate order. No appearance is necessary.

35. 14-25820-D-11 FWP-74 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF CEMO FAMILY CHARITABLE FOUNDATION, CLAIM NUMBER 60
5-8-17 [1294]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Cemo Family Charitable Foundation (Claim No. 60), and the claim will be disallowed in any amount over $75,000. Moving party is to submit an appropriate order. No appearance is necessary.

36. 14-25820-D-11 FWP-75 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF STEVEN J. AND ELIZABETH ANN WILLIAMS, CLAIM NUMBER 66
5-8-17 [1299]

Tentative ruling:

The court will use this hearing as a status conference.

37. 14-25820-D-11 FWP-76 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF JULIE LEUVREY, CLAIM NUMBER 69
5-8-17 [1304]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection of the plan administrator has been filed and the objection is supported by the record. Accordingly, the court will sustain the plan administrator's objection to the claim of Julie Leuvrey (Claim No. 69), and the claim will be disallowed in any amount over $739,000. Moving party is to submit an appropriate order. No appearance is necessary.

38. 14-25820-D-11 FWP-77 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF DENNIS TREADAWAY, CLAIM NUMBER 74 5-8-17 [1309]

Final ruling:

This is the plan administrator's objection to the claim filed in this case as Claim No. 74. The objection has been resolved by stipulation of the parties, which has been approved by the court. The matter will be removed from calendar.

39. 14-25820-D-11 FWP-78 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF COMMUNITY 1ST BANK, CLAIM NUMBER 67 AND/OR OBJECTION TO CLAIM OF COMMUNITY 1ST BANK, CLAIM NUMBER 68 5-8-17 [1314]

Tentative ruling:

The court will use this hearing as a status conference.

40. 14-25820-D-11 FWP-79 — INTERNATIONAL MANUFACTURING GROUP, INC. — OBJECTION TO CLAIM OF RONALD ASHLEY, CLAIM NUMBER 57 5-8-17 [1320]

Final ruling:

This is the plan administrator's objection to the claim of Ronald Ashley (the "Claimant"), Claim No. 57 on the court's claims register. Although the moving party served the Claimant at the address on his proof of claim, the moving party failed to also serve the Claimant at the different address listed for him on the debtor's schedules, as required by LBR 3007-1(c). Accordingly, the court will continue the hearing to July 5, 2017, at 10:00 a.m., the moving party to file and serve a notice of continued hearing on the Claimant at both addresses and to serve the motion and supporting documents on the Claimant at the address on the debtor's schedules. The notice of continued hearing shall advise the Claimant that no written opposition is required and that opposition may be presented at the hearing.

The hearing will be continued by minute order. No appearance is necessary on June 21, 2017.

41. 17-22923-D-7 MS-1 — VARDUHI ARSHAKYAN — MOTION TO AVOID LIEN OF MAIN STREET ACQUISITION CORP. 5-2-17 [7]

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.

42. 17-22923-D-7 VARDUHI ARSHAKYAN — MOTION TO AVOID LIEN OF MAIN STREET ACQUISITION CORP.
MS-2 — 5-2-17 [12]

Tentative ruling:

This is the debtor's motion to avoid an ostensible judicial lien held by Main Street Acquisition Corp. ("Main Street"). The court is not persuaded there is a judicial lien here separate from the judicial lien the court is avoiding on the debtor's motion that is DC No. MS-1, also on this calendar. The motion treats the situation as if Main Street has two judicial liens, one for $8,346.67 and another for $13,476.02, whereas in the court's view, the so-called lien referred to in this second motion is really a mechanism for enforcement of the original judicial lien – the one that will be avoided on DC No MS-1.[1] Thus, in the court's view, this motion is moot because, upon the granting of MS-1, there is no judicial lien remaining to be avoided pursuant to § 522(f), although a proceeding under Fed. R. Bankr. P. 7001(2) might be appropriate.

Accordingly, the court intends to deny the motion as moot. If the moving party wishes to brief the issue, the court will continue the hearing. The court will hear the matter.

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1 The judicial lien that is the subject of MS-1 was created by the recording of an abstract of judgment. The abstract reveals that the underlying judgment was entered on March 3, 2011 in the amount of $8,346.67. The present motion, MS-2, is a motion to avoid an alleged judicial lien purportedly created by the recording, five and a half years later, of a notice of levy. The notice of levy indicates the total amount due the creditor is $13,476.02. Attached to the notice of levy is a writ of execution indicating it concerns a judgment entered on March 3, 2011 in the original amount of $8,346.67, the same date and amount as the judgment underlying the abstract of judgment that is the subject of MS-1. The writ of execution clearly indicates the difference between the $8,346.67 and $13,476.02 figures is made up of interest and court costs and fees. In contrast, the debtor's motion MS-2 adds the $13,476.02 into the calculation as a lien in addition to a lien for $8,346.67.

43. 06-22225-D-7 BETSEY LEBBOS — MOTION FOR COMPENSATION FOR LINDA S. SCHUETTE, CHAPTER 7 TRUSTEE(S)
5-22-17 [645]

Tentative ruling:

This is the trustee's motion for final compensation in this case. The court has the following concern. The proof of service evidences service of the motion only and not the notice of hearing, declaration, or exhibits. The motion itself does not give any information about the date, time, or place of the hearing, as to the manner in which opposition, if any, will be required, or any notice that there will be a hearing or that parties-in-interest may file opposition. If the trustee in fact served the entire package and not just the motion, and thus, is able to file a corrected proof of service by the time of the hearing, the court will hear the matter. Otherwise, the court will continue the hearing to allow the trustee to file a notice of continued hearing and to serve it on all parties-in-interest.

The court will hear the matter.

44.	06-22225-D-7 MPD-19	BETSEY LEBBOS	MOTION FOR COMPENSATION FOR MICHAEL P. DACQUISTO, TRUSTEES ATTORNEY(S) 5-23-17 [649]

45.	11-34330-D-7 17-2033 IYASERE ET AL V. GARCIA ET AL	WILLIAMS/BLESSING IYASERE BMH-1	MOTION TO DISMISS ADVERSARY PROCEEDING 4-19-17 [7]

Tentative ruling:

This is the motion of defendants Isabella Garcia, dba Alliance Financial ("Alliance"), Rajinder Sharma, and Arun Mohindra (collectively, the "defendants") to dismiss the complaint of the plaintiffs, William O. Iyasere and Blessing A. Iyasere, who are also the debtors in the underlying chapter 7 case (the "debtors"), pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted.[1] The debtors have filed opposition and the defendants have filed a reply. For the following reasons, the motion will be granted without leave to amend.

There is a preliminary matter that needs to be addressed. The court has been presented with and has considered matters outside the pleadings, which at first glance suggests the court must convert the motion to a motion for summary judgment and afford the parties time to present additional material. See Fed. R. Civ. P. 12(d). "A court may, however, consider certain materials – documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment." United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003); Mullis v. United States Bankruptcy Court, 828 F.2d 1385, 1388 (9th Cir. 1987) ["facts subject to judicial notice may be considered on a motion to dismiss"]; see also Intri-Plex Techs., Inc. v. Crest Group, Inc., 499 F.3d 1048, 1052 (9th Cir. 2007). Here, the matters outside the record which the court has considered are (1) the defendants' exhibits consisting of records of debtor Blessing Iyasere's state court action against the defendants; and (2) the records of the debtors' underlying case and prior cases in this court.

As to the former, the defendants have requested the court take judicial notice of the following documents in the state court action: debtor Blessing Iyasere's original and amended complaints, the court's docket, the judgment, a motion to quash subpoenas filed by debtor Blessing Iyasere as the judgment debtor, the defendants' opposition to that motion, and the court's ruling on that motion. The debtors have not opposed the defendants' request for judicial notice. In any event, "[m]aterials from a proceeding in another tribunal are appropriate for judicial notice." Biggs v. Terhune, 334 F.3d 910, 916, n.3 (9th Cir. 2003). As to the documents in this court's files in the debtors' bankruptcy cases, a court may take judicial notice of its own records (Mullis, 828 F.2d at 1388, n.9; Morales v. Stevco, Inc., 2012 U.S. Dist. LEXIS 68640, *3-4, n.2 (E.D. Cal. 2012)), even its records in other cases. United States v. Wilson, 631 F.2d 118, 120 (9th Cir. 1980); Macklin v.

Hollingsworth, 2014 U.S. Dist. LEXIS 125365, *7-8 (E.D. Cal. 2014). Further, in their opposition, the debtors briefed the motion as both a motion to dismiss and a motion for summary judgment. For both of these reasons, the court need not convert the motion to a motion for summary judgment.

I. Attorney's fee award under Siegel and Ybarra – returning to the fray

The motion raises two questions. The first, as succinctly stated by the Ninth Circuit Bankruptcy Appellate Panel, is: "whether the attorney's fees the state court awarded against [the debtor] constitute a prepetition debt or a postpetition debt for purposes of [the debtor's] chapter 7 discharge." Bechtold v. Gillespie (In re Gillespie), 516 B.R. 586, 590 (9th Cir. BAP 2014). The debtors' complaint alleges that defendant Alliance's attempts to collect on a state court judgment it acquired by assignment from defendant Sharma are in violation of the debtors' chapter 7 discharge. Defendants Sharma and Mohindra were among the defendants in the state court action, which was brought pre-petition and prosecuted – both pre- and post-petition – by debtor Blessing Iyasere.[2] Defendant Sharma prevailed in the state court action (the plaintiff, debtor Blessing Iyasere, having dismissed the remaining defendants either before or at the time of trial) and was awarded his attorney's fees and costs as the prevailing party. It is the judgment on that award that Alliance has been attempting to collect.[3]

The Ninth Circuit has specifically addressed this issue twice; its decisions govern the outcome of this motion. In Boeing N. Am., Inc. v. Ybarra (In re Ybarra), 424 F.3d 1018 (9th Cir. 2005), and Siegel v. Federal Home Loan Mortg. Corp., 143 F.3d 525 (9th Cir. 1998), the court held that "post-petition attorney fee awards are not discharged where post-petition, the debtor voluntarily 'pursued a whole new course of litigation,' commenced litigation, or 'returned to the fray' voluntarily." Ybarra, 424 F.3d at 1024, citing Siegel, 143 F.3d at 533-34. The rationale is that where a debtor, having "been freed [by a bankruptcy discharge] from the untoward effects" of a contract he has entered into, such that the creditor cannot pursue him further, chooses post-petition "to return to the fray and to use the contract as a weapon . . . [i]t is perfectly just, and within the purposes of bankruptcy, to allow the same weapon to be used against him." Siegel, 143 F.3d at 1533.

In Siegel, the debtor commenced his state court action against the defendant post-petition, alleging tort and breach of contract claims arising out of foreclosures on two of his properties.[4] The court held:

> Siegel's decision to pursue a whole new course of litigation made him subject to the strictures of the attorney's fee provision [in the deeds of trust]. In other words, while his bankruptcy did protect him from the results of his past acts, including attorney's fees associated with those acts, it did not give him carte blanche to go out and commence new litigation about the contract without consequences.

Id. at 534.

In Ybarra, the court expanded the holding of Siegel to a case where the debtor had commenced the state court action pre-petition, as in the present case. When the debtor in Ybarra filed her chapter 11 petition, she did not schedule her state court claims, but the defendant later learned about the bankruptcy, obtained conversion of the case to chapter 7, and purchased the claims from the chapter 7 trustee. The state court then dismissed the state court action on the defendant's motion (the defendant having purchased the debtor's claims from the trustee). The debtor then

amended her claim of exemptions to include the claims she had asserted in the state court action, and her exemption claim was allowed on appeal. The debtor then persuaded the state court to set aside the dismissal. The case proceeded, resulting in summary judgment for the defendant and an award of attorney's fees and costs to the defendant as the prevailing party.

The Ninth Circuit reaffirmed Siegel (Ybarra, 424 F.3d at 1026) and held that the debtor's actions in claiming the exemption, appealing the disallowance of the exemption until it was reversed, and persuading the state court to set aside its earlier dismissal of the case "were sufficiently voluntary and affirmative to be considered 'returning to the fray'" (id. at 1027), and thus, under Siegel, the attorney's fee award was not covered by the discharge. Id. The court framed the applicable test as this: "[w]hether attorney fees and costs incurred through the continued prosecution of litigation initiated pre-petition may be discharged depends on whether the debtor has taken affirmative post-petition action to litigate a prepetition claim and has thereby risked the liability of these litigation expenses." Id. As the court did in Ybarra, this court answers that question in the affirmative in this case.

The debtors have a long history in this court, some of which has overlapped events in the state court action. The debtors' conduct in this court has been highly questionable throughout; the present adversary proceeding follows that pattern. Debtor Blessing Iyasere's original and amended complaints and the docket in the state court action, of which the court takes judicial notice, reveal the following. On September 15, 2010, Blessing Iyasere filed a complaint in the Sacramento County Superior Court against defendants Sharma and Mohindra, along with a bank, two title companies, and a mortgage company, for 14 different causes of action, including breach of fiduciary duty, fraud, and civil conspiracy. The complaint alleged, among other things, that the defendants conspired to put the debtor into a mortgage loan she could not afford, without informing her of its terms. The debtor sought, among other things, monetary damages, forgiveness of the loan, an injunction against the pending foreclosure, and to quiet title to the property in herself. The property that was the subject of the foreclosure and the state court action was the debtors' apartment complex known as the Dixieanne Apartments.

In bankruptcy schedules filed less than a month earlier, on August 18, 2010, in Case No. 10-41943, the debtors, including debtor Blessing Iyasere, scheduled as assets a worker's compensation claim, a "possible action against SAC Dixie Properties LLC related to purchase of DixiAnn apartment complex" based on "failure to disclose" – which claim they valued at $1.00, a fire insurance claim, and past due rent claims against former tenants, but failed to schedule any claim against any of the defendants Blessing Iyasere would, less than a month later, sue in the state court action.[5] Case No. 10-41943 was dismissed on September 8, 2010, one week before Blessing Iyasere commenced the state court action; thus, at the time the state court action was filed, the claims alleged in it were apparently property of Blessing Iyasere rather than property of a bankruptcy estate; however, the debtors' schedules filed in Case No. 10-41943 were false in that they failed to disclose the claims Blessing Iyasere would assert in the state court action less than a month later.

On June 8, 2011, nine months after Blessing Iyasere filed the complaint commencing the state court action, the debtors commenced as a chapter 11 case the underlying case in which, five and a half years later, they would file this adversary proceeding. Although they disclosed on their Schedule B a "claim against

Rajinder Sharma" having an unknown value, they failed to disclose the existence of the state court action. Where required on their statement of affairs to list all lawsuits to which they were then or within the prior year had been parties, the debtors listed, "Only eviction lawsuits against tenants." That is, they concealed the existence of the then-pending (and active) state court action.[6] On July 11, 2011, the debtors filed an amended statement of affairs in which they reiterated their testimony that the only lawsuits to which they were or within the prior year had been parties were eviction lawsuits against tenants, thus again concealing the state court action.

On July 20, 2011, the debtors filed a disclosure statement in support of a chapter 11 plan. The disclosure statement included a liquidation analysis that disclosed only real properties (not including the Dixieanne Apartments),[7] two vehicles, minimal amounts in the bank, household goods, wearing apparel, and jewelry of minimal value, and "Claims Debtor Does not intend to pursue," valued at $0. Debtors' Disclosure Statement, Case No. 11-34330, DN 86, Ex. D. They did not mention in the liquidation analysis or the disclosure statement the pending state court action or the claims against the defendants. In other words, whereas the "claim against Rajinder Sharma" had been listed on the debtors' Schedule B at the commencement of the case, on June 8, 2011, with an unknown value, by July 20, 2011, it had become, at least for purposes of their chapter 11 disclosure statement, a claim the debtors did not intend to pursue.

On July 25, 2011, the court issued an order in Case No. 11-34330 (the case in which this adversary proceeding is pending) for the debtors to show cause why the case should not be dismissed or converted. The court noted the debtors had filed four other bankruptcy cases in the prior 18 months, all of which had been dismissed, the first three based on the court's specific findings of bad faith. The court also noted that Case No. 11-34330, the debtors' fifth case, was filed while the fourth case was still pending. In response, the debtors testified three of the prior cases were filed in an attempt to retain the Dixieanne Apartments. They added, "The lender ultimately foreclosed on the apartment building after the tenants moved out due to the litigation." Case No. 11-34330, DN 95, at 2:5-6. They concluded, "Because the apartment building is now no longer an issue, this case unlike the prior cases, will result in a confirmable plan." Id. at 2:20-21. They did not mention the state court action or Blessing Iyasere's claims against the defendants, although they did say they had been "involved in significant state court litigation with the City of Sacramento" regarding the same property. Id. at 2:2-3.

In its ruling on the order to show cause, the court found the debtors had acted in bad faith and in contempt of the court's prior orders, and that the debtors' serial filings were "the result of extreme hubris." Case No. 11-34330, DN 109, p. 2. Based on the debtors' proposed chapter 11 plan, under which they would have retained remaining rental properties (other than the Dixieanne Apartments) with a positive cash flow while paying nothing to general unsecured creditors, the court concluded the chapter 11 case was filed in bad faith and there was no reasonable prospect of a successful reorganization, and converted the case to chapter 7. The case was converted to chapter 7 on August 4, 2011; the debtors received their discharge on December 6, 2011. The record does not disclose whether the chapter 7 trustee was ever made aware of the state court action.

Meanwhile, by the time the debtors filed their disclosure statement in the chapter 11 case, on July 20, 2011, specifically stating there were no claims they intended to pursue, debtor Blessing Iyasere had, in the state court action, sought a temporary restraining order, filed a notice of pending action, served the summons

and complaint, taken defendant Sharma's default, filed a request to dismiss one defendant without prejudice, filed a case management statement, and filed opposition to a motion for judgment on the pleadings. Post-petition; that is, after June 8, 2011, she had filed opposition to Sharma's motion to set aside the default. After the debtors filed their disclosure statement in the chapter 11 case, debtor Blessing Iyasere continued to actively litigate the state court action, despite the fact that until the converted chapter 7 case was closed, on September 28, 2012, her claims in the state court action were property of the bankruptcy estate and, from and after August 4, 2011, subject to the chapter 7 trustee's exclusive control and standing to sue. Estate of Spirtos v. One San Bernardino County Superior Court Case Numbered SPR 02211, 443 F.3d 1172, 1176 (9th Cir. 2006) (standing to sue); Reno Snax Sales, LLC v. Heritage Bank of Nev. (In re Reno Snax Sales, LLC), 2013 Bankr. LEXIS 4621, *12 (9th Cir. BAP 2013) (control).[8]

Virtually nothing happened in the state court action in 2013. In January of 2014, debtor Blessing Iyasere's attorney filed a motion to be relieved as her counsel, which was granted. In April of 2014, Blessing Iyasere filed a response to an order to show cause re sanctions, as well as an ex parte application that is listed but not described in the court's docket. The case was ultimately tried on June 30 and July 1, 2014. Debtor Blessing Iyasere and defendant Sharma engaged in post-trial briefing and judgment was entered in favor of defendant Sharma. (The debtor had dismissed the other defendants either before or at the time of trial.) On February 23, 2015, the state court entered judgment in favor of defendant Sharma and against the debtor and awarded defendant Sharma attorney's fees and costs totaling $30,455.20. It is the collection of that judgment that the debtors seek to stop by way of this adversary proceeding.

Specifically, they contend collection efforts by Sharma's assignee, Alliance, violated their discharge; they seek actual damages, punitive damages, statutory damages, declaratory relief, attorney's fees and costs, and a determination of dischargeability of the state court judgment. The complaint includes causes of action for declaratory relief, breach of contract, "concealment," violation of the California Unfair Business Practices Act, violation of the discharge, and attorney's fees and costs. All the other causes of action depend on the cause of action for violation of the discharge; all the others stand or fall with it.

The facts of the case; namely, debtor Blessing Iyasere's "return to the fray" when she actively continued prosecution of the state court action after the debtors filed their chapter 11 case and after the case was converted to chapter 7 bring the case squarely within the Ninth Circuit's holdings in Siegel and Ybarra. The debtors attempt to distinguish Siegel and Ybarra solely on the ground that Blessing Iyasere commenced the state court action pre-petition and she neither commenced nor "revived" it post-petition. (In Siegel, the debtor commenced his state court action post-petition; the Ybarra court referred to the debtor having "revived" her pre-petition action by persuading the state court to set aside its earlier dismissal of the case.)

However, there is nothing in Siegel or Ybarra to suggest the Ninth Circuit would so limit either holding, and the reasoning in Ybarra suggests strongly the court would not limit its holding to a case "revived" by the debtor after having been dismissed by the state court. In Ybarra, the court framed the issue this way: "Whether attorney fees and costs incurred through the continued prosecution of litigation initiated pre-petition may be discharged depends on whether the debtor has taken affirmative post-petition action to litigate a prepetition claim and has thereby risked the liability of these litigation expenses." Ybarra, 424 F.3d at

1026 (emphasis added). Both Ybarra and Siegel cited with approval In re Sure-Snap Corp., 983 F.2d 1015 (11th Cir. 1993), where the debtor, after discharge of the defendant's claims against it through a confirmed chapter 11 plan of reorganization, appealed the bankruptcy court's earlier determination that the defendant's mortgage claim against the debtor was valid. Sure-Snap held:

> The attorney fees Bradford seeks were incurred by Bradford in defending a post-confirmation appeal initiated by Sure-Snap. Sure-Snap voluntarily continued to litigate the validity of the Agreement after confirmation of its Chapter 11 plan. Bradford had no choice but to defend. By choosing to appeal the validity of the Agreement after confirmation, Sure-Snap did so at the risk of incurring post-confirmation costs involved in its acts. "Bankruptcy was intended to protect the debtor from the continuing costs of pre-bankruptcy acts but not to insulate the debtor from the costs of post-bankruptcy acts."

Siegel, 143 F.3d at 533, quoting Sure-Snap, 983 F.2d at 1018 (emphasis added).

The last sentence in that quotation is from In re Hadden, 57 B.R. 187 (Bankr. W.D. Wis. 1986), which was procedurally similar to the present case. The debtor commenced his state court action eight months before filing a chapter 7 petition. Two weeks after the debtor received his discharge, he proceeded with trial of the state court action, which resulted in a judgment for the defendant, along with an award of prevailing party attorney's fees. The Ybarra court quoted this language from Haddin:

> The bankruptcy court noted that "bankruptcy was intended to protect the debtor from the continuing costs of pre-bankruptcy acts but not to insulate the debtor from the costs of post-bankruptcy acts." It therefore balanced the competing policy concerns of providing debtors with a fresh start and preventing post-bankruptcy acts taken with "impunity." The court concluded: "If the debtor chooses to enjoy his fresh start by pursuing pre-petition claims which have been exempted, he must do so at the risk of incurring the post-petition costs involved in his acts."

Ybarra, 424 F.3d at 1024, quoting Hadden, 57 B.R. at 190.

In the present case, the debtors scheduled a "claim against Rajinder Sharma," having an unknown value, and claimed a $1.00 exemption in it. They twice failed to disclose the pending state court action in their statement of financial affairs – where required to do so – and it is an open question whether they ever disclosed it to the chapter 7 trustee. Post-petition and pre-conversion, debtor Blessing Iyasere filed opposition to defendant Sharma's motion to set aside the default against him. Post-conversion and pre-discharge, she filed opposition to a second motion by the defendants for judgment on the pleadings and a case management statement. One month after the debtors' discharge was entered, she filed a first amended complaint and three weeks after that, another case management statement. The case proceeded for two years and five months until trial, which was followed by post-trial briefing. Throughout, as the Ybarra court emphasized about Sure-Snap (Ybarra, 424 F.3d at 1024), the defendants had no choice but to defend.

To conclude, this is a classic Siegel/Ybarra case. The debtors want the fresh start afforded by their discharge (and, of course, wanted the monetary damages and title to real property free and clear of the defendants' lien, which debtor Blessing

Iyasere sought in the state court action), and at the same time, they want to be insulated from the attorney's fees awarded to defendant Sharma after debtor Blessing Iyasere forced him, post-petition, post-conversion, and post-discharge, to incur those fees to defend himself. The Ninth Circuit Bankruptcy Appellate Panel, based on Ybarra, Siegel, and Sure-Snap, has held that "[t]he Ybarra rule applies regardless of whether the litigation begins prepetition or postpetition . . . ." Gillespie, 516 B.R. at 591-92.[9] This court agrees. The fact that Blessing Iyasere commenced the state court action pre-petition does not insulate her from a determination that under Siegel and Ybarra, Alliance's attorney's fee judgment is not discharged, and the court so concludes.

II. Collateral estoppel effect of the debtor's motion to quash

The court grants the motion on the basis discussed above. However, for the sake of completeness, the court will also address the defendants' second argument – that the state court's denial of the motion of debtor Blessing Iyasere, as the judgment debtor, to quash certain subpoenas precludes litigation of the debtors' claims in this adversary proceeding under the doctrine of collateral estoppel, now known as issue preclusion. "Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state court judgment in a subsequent bankruptcy proceeding is determined by the preclusion law of the state in which the judgment was issued." Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001). Under California law, the party urging application of the doctrine must show the following five factors apply:

> First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.

Id., quoting Lucido v. Superior Court, 51 Cal. 3d 335, 341 (1990). Here, the defendants have failed to satisfy their burden as to the first and third factors; thus, the court need not consider the second, fourth, or fifth.

In attempting to collect on the judgment, Alliance served subpoenas for the production of documents on three banks and a credit union. Debtor Blessing Iyasere, as the judgment debtor, filed a motion to quash the subpoenas on the ground that "the subpoena is an attempt to collect a debt that has been discharged in bankruptcy despite the fact that the assignee has been notified of the discharge." Debtor's motion to quash, Defendants' Ex. E, at 2:2-4. In particular, the debtor argued that at the time of her bankruptcy filing, there was no award of attorney's fees so the amount of the debt was not included on her bankruptcy schedules, and that she "subsequently reopened her bankruptcy, and the current judgment was included in the discharge." Id. at 3:9-10.

On their original Schedule F in Case No. 11-34330, the debtors listed defendants Sharma and Mohindra as being owed $0.00. Where required to state the consideration for the claim, the debtors answered, "Notice Only." On January 22, 2016, the debtors filed a motion to reopen the case so they could file an amended Schedule F, on which they scheduled Sharma and Mohindra as being owed $33,022. They described the consideration for the claim as, "Amount updated with final judgment amount. Judgment entered in Sacramento County Civil Court, Case No. [number]."

Debtors' amended Schedule F, filed Jan. 22, 2016 in Case No. 11-34330. The debtor's argument on the motion to quash was that the filing of the amended Schedule F operated to bring the judgment within the scope of her bankruptcy discharge.

Alliance opposed the motion to quash on the ground that under Siegel and Ybarra, the debt represented by the judgment was not discharged.[10] Alliance argued: "Here, Judgment Debtor failed to list this lawsuit on her bankruptcy petition as a debt, since she no doubt anticipated prevailing. . . . Subsequent to her discharge, Debtor continued to vigorously pursue causes of action against Mr. Sharma, which she ultimately lost. The fees incurred were a result of her voluntary post-petition conduct and are not discharged by her 2011 bankruptcy." Alliance's opposition to motion to quash, Defendants' Ex. F, at 8:1-9. Alliance expressly analyzed the issue in terms of Siegel and Ybarra – the same analysis it puts forth here.

However, the state court's ruling on the motion was not based on those cases. Instead, the state court held the debtor had "failed to persuade the court" that her amended Schedule F and the subsequent closing of the bankruptcy case "necessarily encompassed an order discharging the new debt." Defendants' Ex. G, p. 2.[11] The state court did not rule on the Siegel/Ybarra issue one way or the other. Instead, it stated:

> Although the court denies the motion, it does not accept Garcia's argument that judicial precedents deprived the bankruptcy court of authority to discharge the subject post-petition judgment. Even if the bankruptcy court discharged the judgment in error, this court would not be at leave to disregard that act and authorize efforts to collect on the judgment. Any error in the bankruptcy court would be the subject of review in the federal judicial system, not here.

Id. The court is not certain what the state court meant in referring to the possibility the bankruptcy court "discharged the judgment in error" because it assumes this court did "discharge the judgment"; that is, that the judgment was covered by the discharge, whereas the court has ruled above it was not. But in any event, the state court expressly declined to rule that "judicial precedents [presumably Siegel and Ybarra] deprived the bankruptcy court of authority to discharge the subject post-petition judgment."

Thus, the issue as to which the defendants would now apply issue preclusion – the Siegel/Ybarra issue – is not identical to the issue decided by the state court on the motion to quash. Further, the issue was expressly not decided by the state court, and the defendants have failed to demonstrate that at least two of the required factors are present.

Finally, the debtors request leave to amend any deficiencies the court might find in their complaint. Although "[t]he court should freely give leave [to amend] when justice so requires" (Fed. R. Civ. P. 15(a)(2), incorporated herein by Fed. R. Bankr. P. 7015), it need not be granted where amendment would be futile. Intri-Plex Techs., Inc., 499 F.3d at 1056; Heagler v. Wells Fargo Bank, N.A., 2017 U.S. Dist. LEXIS 49815, *7 (E.D. Cal. March 31, 2017). The court is unable to conceive of any manner in which the debtors might amend their complaint that would avoid the application of Siegel and Ybarra to their claims. Accordingly, leave to amend will be denied.

For the reasons stated, the court intends to grant the motion without leave to amend. The court will hear the matter.

1 The underlying case was closed in 2012. It has been reopened since then for various purposes, this time apparently for the sole purpose of filing this adversary proceeding.

2 Debtor William Iyasere was not a plaintiff in the state court action, apparently for this reason. According to the state court complaint, the action involved a mortgage loan made by the predecessor of one of the defendants to both debtors; however, "[d]uring the course of the loan signing, William Iyasere was required to sign a Quitclaim Deed for the property to Blessing Iyasere." Complaint in Iyasere v. Sharma, et al., Defendants' Ex. A, at 2:18-20. William Iyasere is, however, a plaintiff in this adversary proceeding.

3 None of the defendants ever filed a cross-complaint or asserted a cross-claim of any kind against debtor Blessing Iyasere. Thus, defendant Sharma "prevailed" on his defenses only; there was never any affirmative relief awarded against debtor Blessing Iyasere except for the attorney's fee award to Sharma as prevailing party. Further, as the debtor was never a defendant or cross-defendant in the state court action, there are no automatic stay issues in this case.

4 The facts in Siegel are similar to those in this case, where debtor Blessing Iyasere commenced her state court action during a pending foreclosure proceeding, alleging the defendants' predecessor in interest fraudulently induced her into entering into a loan obligation she could not afford. After the foreclosure sale occurred, she filed an amended complaint to add a claim to void the trustee's deed.

5 The debtor did not sue SAC Dixie Properties LLC in the state court action.

6 The statement of affairs was filed June 16, 2011. On May 4, 2011, in the undisclosed state court action, debtor Blessing Iyasere had filed a case management statement, and on May 6, 2011, an opposition to the defendants' motion for judgment on the pleadings. On June 24, 2011, the debtor filed an opposition to defendant Sharma's motion to set aside the default the debtor had obtained against him.

7 According to the debtor's first amended complaint in the state court action, the trustee's sale took place on September 20, 2010, five days after the debtor filed her original complaint. The debtor later – after the debtors' chapter 11 case had been converted to chapter 7 and after their discharge had been entered – amended her state court complaint to seek to void the trustee's deed.

8 The chapter 7 trustee issued a report of no distribution on September 15, 2011; however, that did not operate to revest property of the estate in the debtors. It was not until the case was closed that the revesting occurred. In re Reed, 940 F.2d 1317, 1321 (9th Cir. 1991) ["Although filing a 'No Asset' report may exhibit the requisite intent to abandon an asset, that report in and of itself cannot result in abandonment unless the court closes the case."]; Perez v. Kennedy (In re Perez), 2011 Bankr. LEXIS 4795, *9 (9th Cir. BAP 2011). The debtors claimed an exemption of only $1.00 in the state court action; thus, at the close of the time to object to exemptions, the asset arguably reverted to them, but only to the extent of $1.00. Schwab v. Reilly, 560 U.S. 770, 782 (2010). The court has no reason to believe debtor Blessing Iyasere continued

to prosecute the state court action for the benefit of her creditors, but for $1.00.

9 In Gillespie, the panel held that a debtor who purchased the estate's interest in the state court lawsuit and litigated it to conclusion had affirmatively and voluntarily returned to the fray, within the meaning of those cases. Id. at 592. Here, debtor Blessing Iyasere did not purchase the estate's interest in the lawsuit; indeed, there is no evidence she even disclosed the lawsuit to the chapter 7 trustee. That is not a fact that weighs in her favor in the Ybarra analysis.

Similarly, there is no evidence she disclosed the existence of her chapter 11 filing or the later conversion to chapter 7 to the state court, despite the fact that her claims in the state court action became property of the bankruptcy estate upon that filing, subject to her administration as a fiduciary for her creditors during the chapter 11 and, upon conversion, subject to the trustee's administration.

10 Actually, the opposition was filed by Isabella Garcia, dba Alliance Financial. Because the court has referred to this defendant throughout this decision as Alliance, the court will continue to do so.

11 The state court was correct. The reopening of the bankruptcy case and the filing of an amended Schedule F to change the amount owed to the defendants had no effect whatsoever on the dischargeability of the judgment. See Beezley v. California Land Title Co., 994 F.2d 1433, 1434 (9th Cir. 1992). Even an amendment to add a creditor who was not originally named in the schedules at all "is irrelevant to dischargeability . . . once a case is closed." Id. at 1437 (O'Scannlain, J., concurring). In a no-asset, no-bar-date case, "the amendment of [the debtor's] schedules, in and of itself, could not possibly have had any effect on the status of his obligation to [the creditor being added]. Either the debt was long ago discharged by the operation of sections 523 and 727 or it was not." Id. In the present case, a claims bar date was set when the debtors filed the case as a chapter 11 case, but when the case was converted, creditors were notified that it was not necessary to file claims at that time because it did not appear there would be assets available for a distribution. The trustee closed the case as a no-asset case; no claims bar date was ever set.

46.	17-20038-D-11 MF-4	LANE FAMILY LIMITED PARTNERSHIP NO. ONE	MOTION TO USE CASH COLLATERAL 5-24-17 [110]

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 debtor's motion to use cash collateral is supported by the record and the relief requested tracks with the court's prior orders allowing the use of cash collateral. As such the court will grant the motion to use cash collateral. Moving party is to submit an appropriate order. No appearance is necessary.

47. 10-42050-D-7 VINCENT/MALANIE SINGH
HLC-107

OBJECTION TO CLAIM OF DAYA CHANDAR, CLAIM NUMBER 107, 209, 210
4-24-17 [970]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim Nos. 107, 209 and 210, Daya Chandar. Moving party is to submit an appropriate order. No appearance is necessary.

48. 17-22450-D-7 PETER HARSANYI
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-17 [12]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, 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. 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). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

49. 17-22056-D-11 JAMES MCCLERNON
RLC-1

MOTION TO EMPLOY STEPHEN M. REYNOLDS AS ATTORNEY
5-11-17 [31]

Final ruling:

This is a motion to employ Stephen M. Reynolds as attorney. Based on the supplemental declaration filed April 27, 2017 the court finds a hearing is not necessary and 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 to employ Stephen M. Reynolds as attorney and will issue an order from chambers. No appearance is necessary.

50. 10-41963-D-7 JEFFREY/PAMELA LATHAM
ELG-2

MOTION TO AVOID LIEN OF SNIDER LEASING CORPORATION, PEARSONS READY MIX CONCRETE INC., AND ROYER WELDING & MAINTENANCE, INC.
5-19-17 [37]

Tentative ruling:

This is the debtors' motion to avoid judicial liens held by Royer Welding & Maintenance, Inc. ("Royer"); Pearsons Ready Mix Concrete, Inc. ("Pearsons"); and Snider Leasing Corp. ("Snider"). No opposition has been filed. For the following reasons, the motion will be granted in part and denied in part.

First, although Pearsons and Snider were served through their registered agents for service of process, Royer was served only at a street address with no attention line. Pursuant to Fed. R. Bankr. P. 9014(b), the moving parties were required to serve the potential respondents pursuant to Fed. R. Bankr. P. 7004(b)(3); that is, in the case of Royer, a corporation, to the attention of an officer, managing or general agent, or agent for service of process. Because the moving parties failed to serve Royer in compliance with the applicable rules, the motion will be denied as to that entity.

As to Pearsons, the relief requested in the motion is supported by the record. The debtors have established that Pearsons' judicial lien impairs an exemption to which the debtors are entitled and the lien is avoidable pursuant to Bankruptcy Code § 522(f). As such, the court will grant the motion as to that entity; the debtors are to submit an appropriate order.

Finally, Snider's judgment was obtained and its abstract of judgment was recorded well over a year after the debtors' petition was filed and over a year after their discharge was entered.[1] The debtors' memorandum of points and authorities cites a California practice guide and case authority for the propositions that "[t]he debtor's right to avoid a judicial lien is determined as of the date the bankruptcy petition is filed" (Memo., DN 39, at 4:17-18) and "the value of the debtor's property as well as any liens on that property are determined as of the date the bankruptcy petition is filed." Id. at 4:27-28. If these propositions are correct (and the court expresses no opinion on the issue), the debtors would not be entitled to avoid the lien because it did not exist on the date their petition was filed.

Equally important, the debtors have submitted no evidence as to whether the debt on which the judgment is based was a pre- or a post-petition debt,[2] and if the latter, no authority for the proposition that a debtor is entitled to avoid a judicial lien arising out of a post-petition debt. The court brought these issues to the debtors' attention in its ruling on an earlier motion to avoid these liens; the debtors have still failed to address them. In short, the debtors have failed to establish they are entitled to the relief requested with respect to Snider's lien.

To conclude, the motion will be denied as to Royer's lien, granted as to Pearsons' lien, and denied as to Snider's lien. If the moving parties wish to brief the issues with respect to Snider's lien, the court will continue the hearing. The court will hear the matter.

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1 The court does not know when Snider's state court action was commenced or whether it was filed on account of a pre- or post-petition debt (see below). Depending on the answers to those questions, and possibly others, there may or may not be automatic stay violation or discharge violation issues. If so, those issues would need to be addressed by way of an adversary proceeding (see Fed. R. Bankr. P. 7001(2)), not a motion to avoid a judicial lien.

2 The debtors did not schedule a debt to Snider on their bankruptcy schedules and did not disclose any lawsuit by Snider on their statement of financial affairs. The amount of Snider's judgment, $116,276 in principal, is significantly higher than the largest debt scheduled by the debtors (except for their two mortgages), $27,492. If the Snider debt had been outstanding, even if contingent, unliquidated, or disputed, at the time the debtors filed their petition, it seems likely they would have known about it and scheduled it.

51. 15-26465-D-7 SCOTT POMEROY
16-2250 GJH-2
ROBERTS V. SWEETLAND

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
4-5-17 [18]

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), for entry of a default judgment against the defendant for $36,000, which is the alleged value of the transfers challenged by the trustee in this fraudulent transfer action. The defendant did not file opposition to this motion; however, "it is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007) (citations omitted). Indeed, the two-step process (entry of default followed by default judgment) is "designed to assure that the plaintiff is entitled to the relief requested. If the plaintiff is not entitled to the relief requested, the court should not enter default judgment . . . ." Id. at 88-89 (citations omitted). Further, the day after this motion was filed, the defendant filed a motion to set aside the entry of her default, which may reasonably be construed as opposition to the present motion. (The court denied the defendant's motion without prejudice on June 7, 2017.)

The trustee begins with the probability that this court does not have the authority to enter a final judgment in this case, pursuant to Stern v. Marshall, 564 U.S. 462, 503 (2011). The defendant has not filed an answer to the trustee's complaint, and thus, has not indicated explicitly, one way or the other, whether she consents to this court's jurisdiction, as permitted by Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553, 557 (9th Cir. 2012), aff'd, 134 S. Ct. 2165 (2014). Thus, the trustee asks this court submit findings of fact and conclusions of law to the district court.

As to the issue of consent to jurisdiction, "the key inquiry is whether the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the non-Article III adjudicator." Wellness Int'l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1948 (2015) (citations omitted, internal quotation marks omitted). Here, the court cannot find that the defendant, in filing her motion to vacate the default against her, exhibited an awareness of the need for her to consent to this court's authority to enter final judgment and of her right to refuse; thus, the court will make the following findings of fact and conclusions of law, together with a recommendation that the district court deny the motion without prejudice.

"Factors which may be considered by courts in exercising discretion as to the entry of default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." Eitel v. McCool, 782 F.2d 1470, 1471-72 (1986) (citation omitted).

There are three circumstances here that weigh heavily in the court's analysis. First, there is an issue as to whether entry of the defendant's default was due to excusable neglect. The motion states "Defendant was served at the address where she

resides, i.e., the Debtor's address" (Trustee's Motion, DN 18, at 2:13), whereas in support of this conclusion, the motion cites only the debtor's Schedule I, filed 15 months before the trustee attempted to serve the summons and complaint. (On his Schedule I, the debtor listed income from his "room mate," who the debtor testified at the meeting of creditors was his girlfriend, who is the defendant here.) The defendant, in contrast, claimed in her motion to set aside the default that she was in the process of moving out of the debtor's residence and did not receive the summons and complaint in time to file a timely response. Although the court denied her motion without prejudice for lack of evidence, the motion raised sufficiently serious questions as to the sufficiency of service and the defendant's reasons for failing to timely respond to suggest a default judgment should not be entered at this stage.

Second, the trustee has submitted inconsistent testimony as to the merits of his substantive claim. Initially, he testifies that "according to Debtor's testimony at the meeting of creditors, Defendant paid nothing to Debtor in exchange for the bills of sale transferring title to the Motor Vehicles to Defendant." Roberts Decl., DN 25, ¶ 3(f) (emphasis added). However, he then testifies, "At his meeting of creditors, the Debtor stated that the purported consideration for the Transfers of the Motor Vehicles was not paid concurrently with the transfer of them to Defendant." Id., ¶ 4(b) (emphasis added). The trustee had the opportunity to submit the better evidence of the debtor's testimony at the meeting of creditors, in the form of a transcript, but he did not do so.[1] Third, as the court concluded on the defendant's motion to set aside the default, the defendant satisfied her burden of alleging the existence of a meritorious defense; thus, there exists the strong possibility of a dispute concerning material facts.

These factors, together with the absence of any cognizable prejudice to the plaintiff and the strong policy of deciding cases on their merits, lead the court to conclude entry of a default judgment would be inappropriate at this time. Accordingly, the court will recommend to the district court that the motion be denied without prejudice. The court will hear the matter.

1 He states instead, "It is my understanding that the recording of the meeting of creditors will be available for the court at the hearing on this matter." Id., ¶ 2. It is not the court's responsibility to obtain a transcript of a meeting of creditors or to seek out the tape recording.

52. 17-21266-D-11 HARD STONE CBO TRUST — MOTION TO DISMISS ADVERSARY PROCEEDING
17-2042
U.S. TRUSTEE V. BALDWIN — 4-20-17 [8]

Tentative ruling:

This is the defendant's motion to dismiss the plaintiff's complaint with prejudice, pursuant to Fed. R. Civ. P. 17(b) (capacity to sue and be sued), 8 (general rules of pleading), and 12(b) (presumably (b)(6) – failure to state a claim).[1] The plaintiff has filed opposition. For the following reasons, the court will conditionally grant the motion, only insofar as it concerns the particular nature of the relief requested in the complaint, and will grant the plaintiff leave to amend the prayer to the complaint. Except to that limited extent, the motion will be denied.

By her complaint in this adversary proceeding, the plaintiff, the United States Trustee, seeks an order enjoining the defendant from filing, singly or jointly, any bankruptcy petition, in any bankruptcy court in any district, for a period of five years, unless prior authorization is obtained from the chief bankruptcy judge in the district in which the defendant seeks to file a petition. Further, the plaintiff states the clerk of the bankruptcy court and deputy clerks "should be" authorized to reject any petition the defendant attempts to file during the five-year period if there is no prior authorization from the chief bankruptcy judge of the district. Apparently, the plaintiff seeks to include language in the order so authorizing the clerk and deputy clerks. The plaintiff would not limit the injunction to future petitions the defendant might attempt to file in his capacity as the trustee of a trust; she would apparently have the court enjoin him from filing a petition in his individual capacity as well. It is this latter point only that, in the court's view, subjects the complaint to dismissal with leave to amend.

The basis of the complaint is that the defendant, as trustee of one or another of four different trusts, within the past year and three quarters, has filed five different chapter 11 petitions in this court without paying the filing fee and without causing the debtor to be represented by an attorney. In each of the five cases, the clerk notified the debtor in writing that debtors that are not individuals must be represented by attorneys.[2] In none of the five cases did the debtor thereafter obtain counsel. The first three cases were dismissed for the debtor's failure to timely file required schedules and statements. The fourth was dismissed on the court's order to show cause, for failure to pay the filing fee or to apply to pay it in installments, for failure to timely file schedules and statements, and for failure to have legal representation. The fifth case, the one in which this adversary proceeding was filed, was dismissed on the United States Trustee's motion for failure to obtain legal representation and for ineligibility to be a debtor.[3]

The plaintiff posits that the defendant filed these cases "to invoke the automatic stay, to cause delay, and to hinder creditors and other interested parties, with no legitimate intent or attempt to perform the debtor duties under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or as required by orders of the Court, nor to effectuate any legitimate purpose under the Bankruptcy Code." Complaint, DN 1 ("Compl."), at 4:25-5:2.

The defendant seeks to have the complaint dismissed on what he attempts to expand into four grounds: (1) that he may not be sued in his individual capacity for actions taken solely in his capacity as trustee of one or another trust; (2) that the complaint fails to meet the pleading requirements of Fed. R. Civ. P. 8; (3) that the complaint fails on the merits because it is against the defendant individually but alleges no actions against him in his individual capacity; and (4) that the plaintiff cannot meet the threshold requirement for injunctive relief in that she cannot show a probability of success on the merits, again, because she seeks to enjoin the defendant, in his individual capacity, from filing a bankruptcy petition, based solely on acts taken as the trustee of a trust. These grounds boil down to a single argument: that the plaintiff cannot seek to enjoin the defendant from filing any bankruptcy petition, whether as an individual or as the trustee of a trust, based solely on actions the defendant took in his capacity as a trustee. The defendant weaves in a second basic theme: that the complaint fails to state a claim against him because he did not do anything, even in his capacity as a trustee, that would warrant an injunction.

The court finds the complaint fails to state a claim for relief in one respect

only: that the relief sought – an injunction against the defendant from filing any bankruptcy petition, even a petition as an individual debtor (or jointly with a spouse) – is not supported by the allegations of the complaint. The complaint contains no allegations of any wrongdoing on the part of the defendant in his individual capacity, only in his capacity as the trustee of the trusts. There is no suggestion that the fear of repeated misconduct, as expressed in the complaint, would be realized if the defendant were to file an individual petition on his own behalf.[4] Thus, the court finds that, to the extent the relief requested includes an injunction against the defendant from filing an individual bankruptcy petition on his own behalf, the complaint fails to state a claim upon which relief can be granted. The court will therefore conditionally grant the motion, granting the plaintiff leave to amend the prayer to the complaint.

However, to the extent the plaintiff seeks to enjoin the defendant from filing any bankruptcy petition as the trustee of a trust, the complaint states a claim upon which relief can be granted. The court disagrees with the defendant's positions that (1) he may not be sued in his individual capacity for actions taken as the trustee of a trust; (2) he did nothing wrong in filing the five petitions for the four different trusts; and (3) the plaintiff has not stated a claim for injunctive relief because she cannot show a probability of success on the merits.

In support of his first proposition, the defendant cites a California case holding that

> [a] trustee . . . cannot be held personally liable under [Cal. Prob. Code] section 18001 for any obligation arising from his ownership or control of trust property, nor can he be held personally liable under section 18002 for any torts committed in the course of his administration of the trust, unless the party seeking to impose such personal liability on the trustee demonstrates that the trustee intentionally or negligently acted or failed to act in a manner that establishes personal fault.

Haskett v. Villas at Desert Falls, 90 Cal. App. 4th 864, 877-78 (2001).[5] The decision does not apply here, where the plaintiff is not seeking to hold the defendant personally liable for anything. She is merely seeking to enjoin him from further bankruptcy filings which, if filed in the same manner as the first five; that is, by a trust without a filing fee and without legal representation, would almost certainly constitute abuses of the bankruptcy process.

Further, to the extent Haskett does apply, it supports the plaintiff, not the defendant, because the facts alleged would demonstrate the defendant intentionally or negligently acted or failed to act in a manner that establishes personal fault. In Haskett, a trust brought an action against certain defendants but failed to bring the action to trial within the statutory five-year period. When the action was dismissed, the court awarded the defendants their costs and attorney's fees and the defendants sought to recover those costs and fees from the trustee of the trust personally. On appeal, the court held the defendants had failed to meet their burden of demonstrating the dismissal of the action resulted from conduct by the trustee that was either intentional or negligent. Haskett, 90 Cal. App. 4th at 878. Rather, "the only facts that [the defendants] presented . . . are that the [action] was dismissed, not the circumstances behind the dismissal." Id.

On this motion to dismiss, the court is not called upon to determine whether the defendant, in filing the five different petitions for the four different trusts, acted intentionally or negligently, only whether the plaintiff has alleged facts

sufficient to state a claim for injunctive relief. On a motion to dismiss, the court is to draw all reasonable inferences in favor of the non-moving party; here, the plaintiff. Dowers v. Nationstar Mortg., LLC, 852 F.3d 964, 969 (9th Cir. March 31, 2017). The facts alleged by the plaintiff are clearly sufficient for the court to reasonably infer that the defendant, in filing the five petitions without filing fee or legal representation for the particular trust that was the debtor, acted negligently or intentionally in a manner that establishes personal fault sufficient to make him subject to an injunction to restrain such conduct in the future.

The defendant offers several arguments for his conclusions that he "filed bankruptcy petitions in good faith on behalf of said Trusts" (Memo. at 5:3) and that the plaintiff has not alleged that the defendant, "acting solely as Trustee for the aforementioned Trusts, intentionally or negligently acted or failed to act in a manner that establishes personal fault." Id. at 5:8-10. The defendant claims (1) he did not pay the filing fees for the various cases because it was not his responsibility to do so; (2) it is the responsibility of the trust beneficiaries to pay the filing fee and to hire counsel to represent the trust;[6] (3) because the assets of the trust "become a bankruptcy estate the moment the bankruptcy petition is filed . . . [they] are no longer available for the Trustee to withdraw assets in the trust to pay said filing fees" (Memo. at 4:1-3); and (4) the trust in the last case (the one in which this adversary proceeding was filed) had only real property and no liquid assets from which to pay the filing fee or to hire counsel. "Therefore, Defendant was incapable of paying said filing fees and was incapable of hiring legal counsel from assets within the trust." Id. at 4:7-8.

The court finds the defendants' arguments are specious and need not determine whether it is the trustee's or the beneficiaries' responsibility to pay the filing fee and to hire counsel to represent the trust in a legal proceeding. The point here is that the plaintiff alleges the defendant, in his capacity as the trustee of a trust, filed five bankruptcy petitions without paying the filing fees and without arranging for counsel to represent the trusts. It is easily inferred from these alleged facts that the defendant filed the petitions without ensuring that funds were available, from whatever source, to pay the filing fee, as required of any debtor, and to hire legal counsel, as required of any non-individual debtor. The defendant has submitted no authority for the proposition that a trustee who files a bankruptcy petition for a trust has no responsibility to ensure the trust will be in a position to fulfill its basic duties; indeed, its first two duties, as a bankruptcy debtor.

The defendant's third argument – that the assets of the debtor become property of the bankruptcy estate once the petition is filed, such that its funds are no longer available to pay the filing fee or to hire counsel, and that the debtor is therefore absolved from doing either – is also specious. And the defendant offers no authority, and there is none, for his fourth proposition – that a debtor with no liquid assets is absolved from paying the filing fee or that a non-individual debtor with no liquid assets need not have legal counsel.

Finally, the court disagrees with the defendant's contentions that the complaint is "rife with inadmissible conclusory statements" and "devoid of supporting facts" (Memo. at 3:12-13), that it is "so disjointed" as to be "practically unintelligible" (id. at 6:15-16), and that it fails to set out only short and plain statements that are simple, concise, and direct, as required by Fed. R. Civ. P. 8. On the contrary, the complaint is plain, simple, and readily understood. What the defendant is really complaining about here is the plaintiff's conclusion that the defendant "filed the Current Case and the above described other

cases to invoke the automatic stay, to cause delay, and to hinder creditors and other interested parties, with no legitimate intent or attempt to perform the debtor duties." Memo. at 6:22-24, quoting the plaintiff's complaint. However, first, "[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b), incorporated herein by Fed. R. Bankr. P. 7009. And second, the plaintiff's allegations about the defendant's intentions, although conclusory, may be readily inferred from the specific factual allegations in the complaint.

For the reasons stated, except for the plaintiff's request to enjoin the defendant from filing an individual bankruptcy petition on his own behalf, the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). As to the request to enjoin the defendant from filing bankruptcy individually, the court will conditionally grant the motion. The plaintiff may file an amended complaint within 20 days from the date of the order on this motion; if she does not, the complaint will be dismissed without further notice or hearing. If the plaintiff files an amended complaint within 20 days from the date of the order, the defendant shall file an answer or other response in accordance with applicable rules.

The court will hear the matter.

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1 To the extent there is any doubt about this court's jurisdiction in this adversary proceeding, the defendant expressly "consents to entry of final orders or judgment by the Bankruptcy Court." Defendant's Memo., DN 14 ("Memo."), at 3:15.

2 In each case, the notice advised the debtor of Local District Court Rule 183, incorporated in bankruptcy cases by LBR 1001-1(c), providing that a corporation or other entity may appear only by an attorney, and cautioned the debtor that if it did not obtain legal representation, the court or a party-in-interest might take action to dismiss the case.

3 The United States Trustee contended the debtor had the burden of demonstrating it was a business trust, not an ordinary trust, which would be ineligible to be a bankruptcy debtor. The debtor failed to respond to the motion or to file anything from which it might be determined what type of trust it was.

4 The plaintiff contends, "there is a substantial and strong likelihood that the Defendant will continue to file abusive bankruptcies that are marked by an intentional disregard of the law and failure to perform the legal duties of a debtor." Compl. at 5:4-6. The plaintiff does not allege the defendant filed any abusive cases on his own behalf as an individual debtor.

5 The plaintiff correctly points out in her opposition that the defendant's citation to Dash v. FirstPlus Home Loan Trust 1996-2, 248 F. Supp. 2d 489, 504 (M.D. N.C. 2003), is completely inapposite. The word "trustee" does not even appear in the decision.

6 He goes so far as to claim that "[a] Bankruptcy Court Clerk, at the Sacramento Court location, stated to Defendant that the Court will bill the beneficiary for the filing fees." Memo. at 4:9-10 (emphasis in original).

53. 17-21266-D-11 HARD STONE CBO TRUST — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
BANK OF AMERICA, N.A. VS.
5-9-17 [35]

DEBTOR DISMISSED: 03/30/2017

54. 13-28369-D-7 EDWIN GERBER — MOTION FOR COMPENSATION FOR JOHN BELL, CHAPTER 7 TRUSTEE
JB-3
5-24-17 [217]

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 appropriate compensation under Bankruptcy Code § 326. As such, the court will grant the motion by minute order. No appearance is necessary.

55. 17-20689-D-11 MONUMENT SECURITY, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
DLR-3
AUSTIN FOWLER VS.
5-8-17 [110]

56. 17-21889-D-7 KATHRYN MARY/DENNIS MENDOZA — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1
WELLS FARGO BANK, N.A. VS.
5-12-17 [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 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.

57. 15-29890-D-7 GRAIL SEMICONDUCTOR
16-2088
CARELLO V. STERN ET AL

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-13-16 [22]

58. 17-22391-D-7 HAROLD BARBER
EAT-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-18-17 [20]

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.

59. 17-22304-D-7 GLENN WOODS

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-18-17 [15]

Final ruling:

The hearing on this motion is continued to July 5, 2017 at 10:00 a.m. to allow for the debtor to appear at the continued Meeting of Creditors which is set for June 27, 2017 at 1:00 p.m. No appearance is necessary on June 21, 2017.

60. 16-23223-D-11 SKYHIGH PROPERTY LLC
HSM-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP DEBTORS ATTORNEY(S

61. 17-23626-D-7 PHYSICIANS SKIN AND WEIGHT CENTERS, INC.
ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN SHOULD NOT BE APPOINTED
5-31-17 [4]

62. 16-25331-D-7 CAROL BENEDETTI
DNL-5
MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR COLDWELL BANKER REAL ESTATE, BROKER(S)
5-31-17 [68]

63. 14-25148-D-11 HENRY TOSTA
GMW-3
MOTION TO MODIFY CHAPTER 11 PLAN
6-7-17 [718]

Tentative ruling:

This is the motion ostensibly of the reorganized debtors in these consolidated cases to modify their confirmed plan of reorganization. The motion was brought pursuant to LBR 9014-1(f)(2); thus, ordinarily, the court would entertain opposition, if any, at the hearing. However, the court has a preliminary concern. The moving papers were signed by Michael Williams as attorney for the debtors, whereas the court on May 15, 2017 signed an order on a substitution of attorneys by which Sunita Kapoor became the debtors' attorney of record. The court notes that on May 22, 2017, Mr. Williams filed a substitution of attorneys signed by himself and Mr. Tosta, individually and on behalf of the family limited partnership (the two debtors), but it is not signed by Ms. Kapoor and has not been made effective by the court, both as required by LBR 2017-1(h). Thus, the court will not consider the substance of the matter, but will consider continuing the hearing to permit Mr. Williams to remedy these defects. The court will hear the matter.

64. 17-23355-D-7 LAURA/KYLE KELLY
DLH-1
MARK BROWN VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
5-31-17 [14]

65.	11-25684-D-7 BSH-2	CRAIG PLUBELL	MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A. 5-25-17 [19]
66.	17-20689-D-11 ET-9	MONUMENT SECURITY, INC.	MOTION TO USE CASH COLLATERAL 6-2-17 [128]
67.	15-29890-D-7 SLC-3	GRAIL SEMICONDUCTOR	MOTION FOR ADMINISTRATIVE EXPENSES 6-1-17 [722]
68.	17-22275-D-7 DNL-5	CALIFORNIA GOLF PROPERTIES, LLC DBA RIVER	MOTION TO APPROVE INTERIM MAINTENANCE AGREEMENT O.S.T. 6-14-17 [38]