UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 25, 2014 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. 14-24100-D-7 ADR-1 — JOHN/KATHY RANGEL — MOTION TO AVOID LIEN OF CITIBANK, N.A. — 5-15-14 [11]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

2. 11-24501-D-7 EJS-1 — SUE AMBROZEWICZ — TRUSTEE'S FINAL REPORT — 5-1-14 [39]

3. 09-31105-D-7 STEPHAN VAN VALKENBURG
SW-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WELLS FARGO BANK, N.A. AND U.S. BANK, N.A.
5-28-14 [86]

Tentative ruling:

This is the motion of Wells Fargo Bank and U.S. Bank (the "Banks") for approval of a compromise of claims allegedly assigned by the trustee to the debtor. A footnote in the notice of hearing refers to "exigent circumstances requiring the parties to obtain settlement approval by July 1, 2014"; the informal settlement agreement filed as an exhibit refers to the debtor vacating the premises by July 1, 2014. Thus, the court will hear the matter; however, the court intends to deny the motion for the following reasons.

First, the notice of hearing, which was the only document served on creditors, did not contain sufficient information to comply with LBR 9014-1(d)(4). Except for the footnote indicating the settlement needs to be approved by July 1, 2014, and except for naming the parties to the settlement, the notice gives no information at all about the settlement. Second, the moving parties failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b), and failed to serve the two creditors listed on the debtor's Schedule H, as required by Fed. R. Bankr. P. 2002(a)(3). (Given the very broad definitions of "creditor" and "claim" under the Bankruptcy Code, see §101(5) and (10), there is no doubt those persons are creditors in this case.)

Finally, it is not clear that the Banks have standing to seek approval of this compromise or that this court has subject matter jurisdiction to consider it. As to the standing issue, Fed. R. Bankr. P. 9019 provides for a motion for approval of a compromise or settlement to be brought by the trustee. In this case, the motion indicates the trustee declined to file a motion to approve the compromise, deeming it unnecessary. The court agrees, although for a different reason. Some background is in order.

When the debtor filed this bankruptcy case, in 2009, he listed on his Schedule B a "claim for moneys paid for real estate foreclosure forebearance to Wells Fargo Bank dba Americas Servicing," which he valued at $10,731. The court will refer to the claims encompassed within that listing as the "Forbearance Claims." The trustee determined the case to be a no-asset case; the debtor received a discharge, and the case was closed in January of 2010. Because the Forbearance Claims had been scheduled by the debtor and had not been administered by the trustee, they were abandoned to the debtor when the case was closed. § 554(c).

In July of 2011, the debtor commenced an action in state court against U.S. Bank, America's Servicing Company, and NDEx West, LLC. In August of 2012, the debtor filed an application to reopen this bankruptcy case so he could list additional claims on his Schedule B – claims he described as "claims for value of house due to unlawful foreclosure sale, claims for wrongful foreclosure, breach of contract, unfair competition, intentional misrepresentation, false promises, violation of unfair debt collection practices, negligence, quiet title, and equitable remedy of cancellation of instruments" against U.S. Bank as trustee, America's Servicing Company, and NDEx West, LLC – the same entities that are defendants in the debtor's state court action. The court will refer to those claims

as the "Foreclosure Claims." The debtor valued those claims, together with the Forbearance Claims, at $250,000. He claimed an exemption of $23,250 in the "foreclosure lawsuit claims and related claims."

In January of 2013, the trustee, who had been reappointed in the reopened case, filed a motion to approve what he characterized as a sale of the Foreclosure Claims to the debtor (the "Sale Motion"), with the estate to remain entitled to receive all net proceeds recovered by the debtor after payment of attorney's fees and costs and the debtor's $23,250 exemption claim. The Sale Motion was granted, and the debtor moved forward with the state court action.

In April of this year, the state court granted the defendants' motion for summary adjudication of the Foreclosure Claims, and those claims were dismissed, leaving only the Forbearance Claims to be litigated. Under the proposed compromise, the debtor would vacate the real property and dismiss the state court action with prejudice, in exchange for a payment of $23,500 by the defendants. According to the Bank's motion, the trustee takes the position that "in light of the dismissal of the Foreclosure Claims it was appropriate to abandon the remaining Forbearance Agreement Claims, which were valued at less than the amount of the Debtor's $23,500 exemption." Motion for Approval of Settlement, filed May 28, 2014, at 4:2-4. The motion adds: "Thus, on May 14, 2014, the Trustee filed a Report of No Distribution." Id. at 4:5.

First, the trustee's report of no distribution, filed May 15, 2014, did not effectuate an abandonment of anything. Property of a bankruptcy estate is abandoned in one of the ways set forth in § 554 of the Code, not by the filing of a report of no distribution. Second, the Forbearance Claims were abandoned in January of 2010, when the bankruptcy case was closed. The Banks have cited no authority for the proposition that the Forbearance Claims came back into the estate when the case was reopened, and the court is aware of none.[1] Neither the reopening of the case nor the debtor's listing of the Forbearance Claims with the newly-added Foreclosure Claims on his amended Schedule B nor his claim of an exemption in the vaguely-described "foreclosure lawsuit claims and related claims" operated to bring the Forbearance Claims back into the bankruptcy estate. The trustee's agreement with the debtor that was the subject of the Sale Motion described the claims being sold as "relat[ing] to unlawful or wrongful foreclosure upon real property owned by the Debtor . . . ." The agreement did not purport to cover the Forbearance Claims; however, even if it had, the court is aware of no authority for the proposition that parties can, by agreement, bring assets back into a bankruptcy estate that have previously been abandoned.[2]

In short, as of January of 2010, the Forbearance Claims were abandoned to the debtor; at no time have they come back into the bankruptcy estate. The Foreclosure Claims were the only claims asserted in the state court action that were property of the estate. The Foreclosure Claims having been dismissed by the state court, the only claims that can be the subject of the present compromise are the Forbearance Claims. As those claims belong to the debtor, not the estate, this court has no jurisdiction to consider the compromise, and the motion will be denied.

The court will hear the matter.

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1 See 3 COLLIER ON BANKRUPTCY ¶ 350.02[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

2 The Banks cite the trustee's agreement with the debtor – the agreement that was the subject of the Sale Motion – as requiring this court's approval of the present compromise. (The agreement provided that "[a]ny settlement with Defendants will be subject to Bankruptcy Court approval.") However, because the agreement did not concern the Forbearance Claims, the requirement does not pertain here.

4.	13-24507-D-7 HRH-2 PNC EQUIPMENT FINANCE, LLC VS.	DKW PRECISION MACHINING INC.	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 5-8-14 [116]

5.	13-33810-D-7 CM-1	ERLINDA GRAHAM	MOTION TO COMPEL ABANDONMENT 5-22-14 [19]

Final ruling:

This is the debtor's motion to compel the trustee to abandon certain real property. The motion will be denied because the notice of hearing contains conflicting and inaccurate information, and does not comply with applicable rules. The notice states, "If you do not want the court to grant the motion, you must file a written response explaining your position with the court on or before June 4, 2014, at [address]." It then adds, "But you do not need to file a written response." Under the court's local rule, a motion may be noticed pursuant to LBR 9014-1(f)(1) or (f)(2), depending on the amount of notice given. If more than 28 days' notice is given, opposition, if any, must be in writing and must be filed and served at least 14 days prior to the hearing date (see LBR 9014-1(f)(1)(B)); if fewer than 28 days' notice is given, written opposition is not required. LBR 9014-1(f)(2)(C). The moving party is required to advise potential respondents whether and when written opposition must be filed (LBR 9014-1(d)(3)), and if required, of the consequences for failing to comply. Id. Here, the notice of hearing gave potential respondents conflicting information as to whether written opposition was required; further, it gave a deadline for the filing of written opposition, June 4, 2014, that was 21 days prior to the hearing date, and thus, that was not an appropriate deadline under the rules. The conflicting and inaccurate information may have deterred potential respondents from opposing the motion.

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

6. 14-23410-D-7 RANDALL RONK
PD-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-16-14 [11]

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 records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

7. 12-26017-D-7 EDUARDO/IRMA MARTIR
SSA-6

MOTION FOR COMPENSATION FOR STEVEN ALTMAN, PC, TRUSTEE'S ATTORNEY
5-28-14 [73]

8. 13-28020-D-7 ROGER/BONNIE TURNER
HSM-7

CONTINUED OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
3-31-14 [54]

Final ruling:

The hearing on this objection is continued to August 13, 2014 at 10:00 a.m. per court order entered on June 12, 2014. No appearance is necessary on June 25, 2014.

9. 13-28020-D-7 ROGER/BONNIE TURNER
HSM-8

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
5-21-14 [71]

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 trustee's motion for order extending time to file objection to discharge of debtors is supported by the record. As such the court will grant the trustee's motion for order extending time to file objection to discharge of debtors. Moving party is to submit an appropriate order. No appearance is necessary.

10. 14-24622-D-7 BHT-1 — DEAN NELSON DELIZO AND MARIA CILENTO — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
CALIFORNIA HOUSING FINANCE AGENCY VS.
5-30-14 [9]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtors' Statement of Intentions indicates they intend to surrender the collateral and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

11. 14-23125-D-7 JKS-1 — HAVEN/DAVID RITCHIE — MOTION FOR RELIEF FROM AUTOMATIC STAY
BANK OF AMERICA, N.A. VS.
5-22-14 [23]

Final ruling:

This matter is resolved without oral argument. This is Bank of America, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

12. 14-25526-D-12 — LAURA BRANDON — STATUS CONFERENCE RE: VOLUNTARY PETITION
5-27-14 [1]

13. 14-21436-D-7 JME-1 — HARRY WILLIAMS — MOTION TO AVOID LIEN OF FIA CARD SERVICES
5-13-14 [16]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by FIA Card Services N.A. ("FIA"). The motion will be denied for the following reasons. First, the attorney who signed the motion and related documents is not the attorney of record for the debtor, and thus, may not participate in the case. LBR 2017-1(b)(1). This case was commenced by Steele Lanphier, of Lanphier & Associates, as attorney for the debtor, whereas this motion and the related documents were signed by Julius M. Engel, of Engel Law Group, as attorney for the debtor. Mr. Engel has not appeared in this case in any of the ways described in LBR 2017-1(b)(2), and has not substituted in to the case as the debtor's counsel. To the extent, if any, he views his signing and filing of this motion as in the nature of an association of counsel,

he has not been associated in to the case as counsel for the debtor in the manner required by LBR 2017-1(j). Thus, he may not participate in the case.

Second, the moving party failed to serve FIA in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served FIA only through the attorneys who obtained its abstract of judgment, whereas there is no evidence those attorneys are authorized to accept service of process on behalf of FIA in bankruptcy adversary proceedings and contested matters pursuant to Fed. R. Bankr. P. 7004. See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004). FIA is an FDIC-insured institution; thus, the moving party was required to serve it by certified mail to the attention of an officer (Fed. R. Bankr. P. 7004(h)) (and only an officer, compare Fed. R. Bankr. P. 7004(h) with Fed. R. Bankr. P. 7004(b)(3)); he did not.

Third, the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. In the proof of service, the declarant certifies under penalty of perjury that she is over the age of 18 and a citizen of the United States. The declarant "further certif[ies]," but not under penalty of perjury, the factual allegations as to service. This does not comply with the applicable statute.

Fourth, the moving papers do not demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6). Applying the formula set forth in § 522(f)(2)(A), it appears there is sufficient non-exempt equity in the property to secure the FIA's lien; thus, the lien does not impair an exemption to which the debtor would be entitled in the absence of the lien. The motion and the debtor's supporting declaration both state that the value of the property is $179,030, that the debtor has claimed an exemption of $67,887 in the property, and that there are no other secured liens against the property. The total of the judicial lien, $8,543, and the amount of the debtor's claimed exemption, $67,887, is $76,430. A judicial lien is considered to impair an exemption only to the extent that this total exceeds the value the debtor's interest in the property would have in the absence of any liens; in this case, that value is $179,030. Thus, because the total of the judicial lien and the exemption does not exceed the value of the property, the judicial lien does not impair the exemption.

The formulation set forth in the motion is this:

Gross value of Lien Property	$179,030
Less: Superior liens (if any)	0
Gross Equity	179,030
Less: Judicial lien	8,543
Net Equity	170,486
Less: Exemption claimed by Debtor	67,887
Net Impaired exemption	$102,599

This formulation is inaccurate for the simple reason that it mislabels the $102,599 figure as "Net Impaired exemption," when in fact that figure is the amount of equity the debtor has in the property over and above his claim of exemption, $67,887, and the judicial lien, $8,543. In other words, the $102,599 figure plus the amount of the judicial lien, 8,543, a total of $111,142, is the amount of equity in the property available to secure the judgment lien.

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

14. 14-24536-D-7 LINDA SMITH
AMENDED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-29-14 [15]

Final ruling:

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

15. 14-23542-D-7 REYNALDO/MARILYN ALACAR
ADR-1
L HAMMOND PROPERTIES, LLC
VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-28-14 [44]

16. 13-24144-D-7 THE CALIFORNIA PRIMARY CARE MEDICAL GROUP, INC.
DMW-2
MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)
5-28-14 [52]

Final ruling:

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

17. 14-25148-D-12 HENRY TOSTA
STATUS CONFERENCE RE: VOLUNTARY PETITION
5-15-14 [1]

Tentative ruling:

This is the initial status conference in this chapter 12 case. The court does not ordinarily issue tentative rulings for status conferences, but does so here to point out a problem with service of the scheduling order and status conference statement. The scheduling order required service on, among others, all holders of secured claims. Here, the debtor's service list for the scheduling order and status conference statement did not include the County of San Joaquin, listed on Schedule D as being owed $147,000 secured by a judgment lien. The court will hear the matter, but intends to continue the status conference to require service on that creditor.

18. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO SUBSTITUTE ATTORNEY
12-2399 KBP-1 — 5-23-14 [61]
BURKART V. SHARMA

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 of defendant to substitute in as in propria perona and for withdrawal of Diamond McCarthy, LLC as counsel of record is supported by the record. As such the court will grant the motion of defendant to substitute in as in propria perona and for withdrawal of Diamond McCarthy, LLC as counsel of record. Moving party is to submit an appropriate order. No appearance is necessary.

19. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-2444 CDH-1 — 4-16-14 [54]
BURKART V. THOMSON

Final ruling:

This is the motion of chapter 7 trustee, Michael Burkart ("plaintiff"), for entry of default judgment against defendant, Douglas Thomson ("defendant"). The motion was noticed under LBR 9014-1(f)(1) and is unopposed. For the following reasons, the motion will be granted.

BANKRUPTCY COURT AUTHORITY

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Benefits Ins. Agency v. Arkison, — S. Ct. — , 2014 WL 2560461, 2014 U.S. LEXIS 3993 (June 9, 2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, defendant is a creditor in the underlying bankruptcy case. See Claim # 54, filed September 21, 2010. Accordingly, the court has authority to enter a final judgment on the fraudulent transfer claim asserted against defendant.

ANALYSIS

A summons and complaint were served on defendant, who failed to answer within the time provided under FED. R. BANKR. P. 7012(a). On August 30, 2013, the clerk of the court entered an order of default against defendant. There are no other defendants in this matter. Accordingly, the well-pleaded allegations in plaintiff's complaint, except for allegations regarding the amount of damages, are deemed admitted. FED. R. CIV. P. 8(b)(6).

Obtaining a default judgment is a two-step process. See Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). First, the clerk of the court enters the default of the party who has failed to plead or otherwise defend; the clerk or the court, depending on the nature of the plaintiff's claim, then enters a default judgment.

FED. R. CIV. P. 55(a) and (b), incorporated herein by FED. R. BANKR. P. 7055. In this case, the clerk, at the request of plaintiff, entered the default of defendant on May 17, 2013. Plaintiff's motion is for entry of default judgment against defendant, pursuant to FED. R. CIV. P. 55(b). Factors the court must consider include the following: (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, 782 F.2d at 1471-72. Resolution of disputes on their merits is generally favored over default judgments. See id. at 1472.

Similar, albeit differently articulated, considerations are involved in the context of a court's exercise of discretion to set aside a default judgment:

> These considerations, are usually listed as (1) whether the default was willful or culpable; (2) whether granting relief from the default would prejudice the opposing party; and (3) whether the defaulting party has a meritorious defense. Such considerations are, therefore, also appropriate considerations when deciding whether to render a default judgment. This is logical. When faced with the decision concerning whether to render a default judgment in the first place, a court logically should consider whether factors are present that would later oblige the court to set that default judgment aside.

10 MOORE'S FEDERAL PRACTICE § 55.31[2] (Matthew Bender 3d. ed. 2012).

Pursuant to the Fourth Claim for Relief of the First Amended Complaint, plaintiff alleges a fraudulent transfer claim under 11 U.S.C. § 548(a)(1)(A). In particular, plaintiff alleges that debtor, Vincent Singh ("Singh"), made nine payments to defendant totaling $20,600.00. The payments consisted of cash, checks, or other forms of transfer directly from Singh or indirectly from one or more accounts in Singh's name, Malanie Singh, Perfect Financial Group, Inc., AAMCO Stockton, Inc., AAMCO Orangevale, Inc., OM L. Singh, John A. Singh, Usha D. Singh, and/or third parties to or for the benefit of defendant. The payments were made as part of a Ponzi scheme perpetrated by Singh. Defendant had invested funds with Singh and received payments in connection with the amounts invested. Although Singh represented that he was making "hard money" loans that would produce funds to be paid back to investors (including defendant), the actual source of the payments from Singh was funds invested by other investors. Pursuant to the Fifth Claim for Relief, plaintiff alleges that, under 11 U.S.C. § 550, he is entitled to recover from defendant any property transferred from Singh by means of an avoidable transfer. Pursuant to the Seventh Claim for Relief, plaintiff alleges that defendant's proof of claim must be disallowed under 11 U.S.C. § 502(d) unless defendant pays to the estate the amount avoided.

A. Propriety of Entering Default Judgment (Eitel Factors)

1. Possibility of Prejudice to Plaintiff

Plaintiff will be prejudiced if default judgment is not granted. Plaintiff, as trustee of a bankruptcy estate being administered in part for the benefit of Ponzi scheme victims, is required to marshal a series of transfers to numerous investors so that each investor can receive his or her aliquot share of investment funds misappropriated by the perpetrator of a Ponzi scheme. Although it seems

counterintuitive to claw back funds redistributed to the victims by Singh, it is necessary in ensuring the equality of treatment of similarly situated creditors. Defendant's failure to respond in this action presents a delay that reverberates through the bankruptcy case: plaintiff is prevented from marshaling and accounting for investment funds that are to be distributed on a pro rata basis. Accordingly, plaintiff will be prejudiced.

2. The Merits of Plaintiff's Claims

The following facts are taken as true given defendant's lack of response. As stated earlier, plaintiff's complaint alleges, inter alia, a claim under 11 U.S.C. § 548(a)(1)(A) that the transfers to defendant were made by Singh with an actual intent to hinder, delay, or defraud defendant and other similarly situated creditors. The court agrees with plaintiff that Singh's conduct amounted to a Ponzi scheme, which is sufficient to establish actual intent to defraud creditors within the meaning of 11 U.S.C. § 548(a)(1)(A). The "existence of a Ponzi scheme is sufficient to establish actual intent under § 548(a)(1)." AFI Holding, Inc. v. Mackenzie (In re AFI Holdings, Inc.), 525 F.3d 700, 704 (9th Cir. 2008) (internal quotation marks omitted).

Plaintiff's complaint adequately alleges that Singh engaged in a Ponzi scheme. In furtherance of this scheme, Singh accepted investment funds from defendant and other similarly situated investors. From time to time, Singh, whether directly or indirectly, distributed payments to the investors as an illusory return on investment. These illusory returns constitute transfers of an interest in property of the debtor within the meaning of 11 U.S.C. § 101(54)(D). The well-pleaded facts show that these transfers were made with an actual intent to hinder, delay, or defraud defendant on or within 2 years before the date of the filing of the petition. Therefore, plaintiff's fourth claim for relief is meritorious.

Although an exception to liability exists in 11 U.S.C. § 548(c) for a defendant who takes in good faith and gives new value, "the defendants' good faith is an affirmative defense under Section 548(c) which must be pleaded in the first instance as a defense by the defendants. It is not incumbent on the plaintiff to plead lack of good faith on the defendants' part because lack of good faith is not an element of a plaintiff's claim under Section 548(a)(1)." Bayou Superfund, LLC v. WAM Long/Short Fund II, L.P. (In re Bayou Grp., LLC), 362 B.R. 624, 639 (Bankr. S.D.N.Y. 2007). As defendant has not filed a response in this action, defendant has not met the burden of proof required to successfully assert a "good faith" defense to plaintiff's fraudulent transfer claim.

Next, plaintiff's complaint adequately alleges that plaintiff is entitled to recover the transfers made to defendant. "[T]o the extent that a transfer is avoided under section . . . 548, . . . the trustee may recover, for the benefit of the estate, the property transferred . . . from— (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made." 11 U.S.C. § 550(a)(1). Therefore, plaintiff's fifth claim for relief is meritorious.

Lastly, plaintiff's complaint adequately alleges that defendant's proof of claim must be disallowed unless defendant pays to the estate the amount of the avoided transfers. "[T]he court shall disallow any claim of any entity from which property is recoverable under section . . . 550, . . . or that is a transferee of a transfer avoidable under section . . . 548, . . ., unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section . . . 550, ..." 11 U.S.C. § 502(d).

Therefore, plaintiff's seventh claim for relief is meritorious.

3. Sufficiency of Plaintiff's Complaint

The court finds that plaintiff's complaint is well-pleaded and sets forth plausible facts—not just parroted statutory or boilerplate language—that show that plaintiff is entitled to the relief sought in the fourth and fifth claims for relief. The complaint sufficiently alleges with particularity facts that show Singh engaged in an extensive Ponzi scheme of which defendant was a victim. Pursuant to the scheme, defendant invested funds and also received certain transfers from Singh. The court is satisfied that plaintiff has pleaded the circumstances of the Ponzi scheme constituting actual fraud with particularity. See FED. R. BANKR. P. 7009, which incorporates FED. R. CIV. P. 9(b) (requiring a party who alleges fraud to plead such fraud with particularity). Moreover, plaintiff has pleaded facts that satisfy the elements of a fraudulent transfer claim sounding in actual fraud.

4. The Amount at Stake

Defendant is liable to plaintiff for a sum of money received via at least nine transfers from Singh. The total amount of avoidable transfers alleged is $20,600.00, subject to change if and when plaintiff discovers other transfers made to defendant. The amount at stake is not a grossly large number, nor is it a nominal amount. Plaintiff has presented evidence showing that Singh made at least nine payments to defendant in the amount alleged. This factor weighs in favor of a default judgment.

5. Possibility of Dispute as to Material Facts

Upon entry of default, all well-pleaded facts in the complaint are taken as true, except allegations relating to damages. Defendant has not advanced any arguments showing material facts in dispute. Given the sufficiency of the complaint and defendant's default, there is no genuine dispute of material fact that would preclude a default judgment.

6. Excusable Neglect

Defendant was properly served with the summons and complaint pursuant to FED. R. BANKR. P. 7004. It is therefore unlikely that defendant's failure to respond to the complaint was due to excusable neglect.

7. Policy in Favor of Deciding on the Merits

"Cases should be decided upon their merits whenever reasonably possible." Eitel, 782 F.2d at 1472. As compelling a factor as this may be, a decision on the merits is not reasonable in light of defendant's complete inaction. Defendant's lack of a response renders a decision on the merits practically impossible. Thus, the ordinary preference to decide cases on the merits must yield to the granting of a default judgment.

B. Damages

The entry of a default judgment establishes the liability of the defaulting party but the moving party still must establish the amount of damages. Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977). "A court does not abuse its discretion by failing to hold a hearing [on damages] when the amount of damages is

liquidated or can be made certain by computation based on the pleadings or information in the existing record." 10 MOORE'S FEDERAL PRACTICE § 55.32[2][b]. In awarding damages here, the court relies on the copies of checks submitted as evidence by plaintiff. The total amount of transfers, according to this evidence, is $20,600.00.

For the reasons stated, the court will enter a default judgment in favor of plaintiff. The court will fix damages according to the amount requested in the complaint. Plaintiff shall submit an appropriate form of judgment.

20.	14-25150-D-12	HENRY TOSTA, JR. FAMILY, L.P.	STATUS CONFERENCE RE: VOLUNTARY PETITION 5-15-14 [1]

Tentative ruling:

This is the initial status conference in this chapter 12 case. The court does not ordinarily issue tentative rulings for status conferences, but does so here to point out a problem with service of the scheduling order and status conference statement. The scheduling order required service on, among others, all holders of secured claims and all parties to executory contracts and unexpired leases. Here, the debtor's service list for the scheduling order and status conference statement did not include the following creditors, listed on its Schedule D or Schedule G: Harold Van Vliet Trucking, Inc.; Western Ag Logistics, Inc.; Wilbur-Ellis Company; and Armando and Maria Pina. The court will hear the matter, but intends to continue the status conference to require service on those creditors.

21.	09-29162-D-11 09-2543 SHARP ET AL V. CSSS, LP	SK FOODS, L.P. KAW-1	MOTION BY KIMBERLY A. WRIGHT TO WITHDRAW AS ATTORNEY 5-15-14 [704]

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

Tentative ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for defendant CSSS, LP, and as counsel for Monterey Peninsula Farms, LLC, and Frederick Scott Salyer, as respondents to certain motions. Plaintiff the Bank of Montreal ("BMO") has filed a limited opposition to the motion. The notice of hearing on the motion did not purport to require that opposition be filed in advance of the hearing date; thus, the court will hear opposition of other parties-in-interest, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The court intends to deny the motion insofar as it pertains to defendant CSSS, LP because there is no evidence the motion was served on that entity. In addition, the moving papers do not include a last known address for CSSS, LP, as required by LBR 2017-1(e).

BMO has raised two objections of a more technical nature: (1) that the notice of hearing does not advise potential respondents whether and when written opposition must be filed, as required by local rule; and (2) the motion and supporting declaration do not include in the caption the date and time of the hearing or the

courtroom where the hearing will be held. In this particular instance, the court finds that the moving party substantially complied with the applicable rules. The notice of hearing did not purport to require written opposition, so the additional cautionary language required by LBR 9014-1(d)(3) was not required here. And the notice of hearing includes, in two places, the date and time of the hearing, the address of the courthouse, and the courtroom where the hearing will be held. The court concludes that sufficient information has been provided to the defendant and respondents to enable them to oppose the motion if they choose.

Finally, BMO complains about Ms. Wright's statement that her clients "confirmed [her] withdrawal/termination on January 30, 2014, and informed [her] that new counsel was obtained, although the identity of new counsel was not provided." Citing the "revolving door" of attorneys who have appeared in this case for the defendant and respondents, and the resulting delays and increased costs, BMO's specific complaint is this:

> Ms. Wright, however, does not submit a copy of any such confirmation or any other information establishing the authority of that person to act on behalf of the particular client. Additionally, no new counsel has appeared in any matter on behalf of any of her clients. Given the history of this and other matters before the Court, additional information regarding such confirmation should be required prior to Ms. Wright's withdrawal.

BMO's Limited Objection, filed June 11, 2014, at 3:21-25. The court disagrees. Subject to opposition that may be offered by Ms. Wright's clients, if any, the court finds that her declaration sufficiently demonstrates cause for permissive withdrawal under the Rules of Professional Conduct; confirmation by the client of the attorney's "withdrawal/termination" is simply not required for a motion to withdraw as counsel. Further, there is no legal basis on which to tie Wright's withdrawal as counsel to the appearance of new counsel.

The court will, however, deny Ms. Wright's request to be permitted to withdraw "as of January 30, 2014" or "as of the date hereof" (the date of the motion). Permitting withdrawal as of either date would operate as a circumvention of the local rule, which permits withdrawal only upon noticed motion and notice to the client and all other parties who have appeared. See LBR 2017-1(e).

For the reasons stated, the court intends to deny the motion as to defendant CSSS, LP; as to respondents Monterey Peninsula Farms, LLC, and Frederick Scott Salyer, the court will hear the matter.

22. 09-29162-D-11 SK FOODS, L.P. MOTION BY KIMBERLY A. WRIGHT TO
09-2692 KAW-1 WITHDRAW AS ATTORNEY
SHARP V. SSC FARMS I, LLC ET AL 5-14-14 [1078]

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

Tentative ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for defendants SSC Farming, LLC; SSC Farms, I, LLC; and SSC Farms, II, LLC. The notice of hearing did not purport to require that opposition be filed in advance of the hearing date; thus, the court will hear opposition, if any, at the hearing.

However, the court will, in any event, deny Ms. Wright's request to be permitted to withdraw "as of January 30, 2014" or "as of the date hereof" (the date of the motion). Permitting withdrawal as of either date would operate as a circumvention of this court's local rule, which permits withdrawal only upon noticed motion and notice to the client and all other parties who have appeared. See LBR 2017-1(e).

The court will hear the matter.

23. 09-29162-D-11 SK FOODS, L.P. MOTION BY KIMBERLY A. WRIGHT TO
10-2014 KAW-1 WITHDRAW AS ATTORNEY
SHARP ET AL V. SALYER ET AL 5-16-14 [822]

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

Tentative ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for defendants SK PM Corp.; Scott Salyer Revocable Trust; Monterey Peninsula Farms, LLC; Frederick Scott Salyer; Blackstone Ranch Corporation; SSC Farms, LLC; SSC Farming, LLC; SSC Farms I, LLC; SSC Farms II, LLC; and SSC Farms III, LLC. The notice of hearing did not purport to require that opposition be filed in advance of the hearing date; thus, the court will hear opposition, if any, at the hearing.

However, the court will, in any event, deny Ms. Wright's request to be permitted to withdraw "as of January 30, 2014" or "as of the date hereof" (the date of the motion). Permitting withdrawal as of either date would operate as a circumvention of this court's local rule, which permits withdrawal only upon noticed motion and notice to the client and all other parties who have appeared. See LBR 2017-1(e).

The court will hear the matter.

24. 09-29162-D-11 SK FOODS, L.P. MOTION BY KIMBERLY A. WRIGHT TO
10-2117 KAW-1 WITHDRAW AS ATTORNEY
SHARP ET AL V. INTERNAL 5-12-14 [242]
REVENUE SERVICE ET AL

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

Tentative ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for third-party defendant Frederick Scott Salyer (the "defendant"). Plaintiff the Bank of Montreal ("BMO") has filed a limited opposition to the motion. The notice of hearing on the motion did not purport to require that opposition be filed in advance of the hearing date; thus, the court will hear opposition of other parties-in-interest, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

BMO has raised three objections of a technical nature: (1) that the notice of hearing does not advise potential respondents whether and when written opposition must be filed, as required by local rule; (2) the motion and supporting declaration do not include in the caption the date and time of the hearing or the courtroom where the hearing will be held; and (3) that the proof of service does not evidence service by mail on the defendant. As to the first two of these, in this particular instance, the court finds that the moving party substantially complied with the applicable rules. The notice of hearing did not purport to require written opposition, so the additional cautionary language required by LBR 9014-1(d)(3) was not required here. And the notice of hearing includes, in two places, the date and time of the hearing, the address of the courthouse, and the courtroom where the hearing will be held. The court concludes that sufficient information has been provided to the defendant to enable him to oppose the motion if he chooses. As to the third issue, however, the moving party will be required to file a corrected proof of service.[1]

Finally, BMO complains about Ms. Wright's statement that her client "confirmed [her] withdrawal/termination on January 30, 2014, and informed [her] that new counsel was obtained, although the identity of new counsel was not provided." Citing the "revolving door" of attorneys who have appeared in this case for the defendant, and the resulting delays and increased costs, BMO's specific complaint is this:

> **Ms. Wright, however, does not submit a copy of any such confirmation or any other information establishing the authority of that person to act on behalf of the particular client. Additionally, no new counsel has appeared in any matter on behalf of any of her clients. Given the history of this and other matters before the Court, additional information regarding such confirmation should be required prior to Ms. Wright's withdrawal.**

BMO's Limited Objection, filed June 11, 2014, at 3:21-25. The court disagrees. Subject to opposition that may be offered by Ms. Wright's client, if any, the court finds that her declaration sufficiently demonstrates cause for permissive withdrawal under the Rules of Professional Conduct; confirmation by the client of the attorney's "withdrawal/termination" is simply not required for a motion to withdraw as counsel. Further, there is no legal basis on which to tie Wright's withdrawal as

counsel to the appearance of new counsel.

The court will, however, deny Ms. Wright's request to be permitted to withdraw "as of January 30, 2014" or "as of the date hereof" (the date of the motion). Permitting withdrawal as of either date would operate as a circumvention of the local rule, which permits withdrawal only upon noticed motion and notice to the client and all other parties who have appeared. See LBR 2017-1(e).

The court will hear the matter.

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1 BMO arguably does not have standing to raise this issue. However, given the "revolving door" of attorneys who have represented the defendant and related parties in this and other adversary proceedings in this case, the court will require a corrected proof of service so there will be no ambiguity about the status of representation of the defendant in the event this motion is granted.

25.	09-29162-D-11 11-2337 SHARP V. SSC&L 2007 TRUST ET AL	SK FOODS, L.P. KAW-1	MOTION BY KIMBERLY A. WRIGHT TO WITHDRAW AS ATTORNEY 5-16-14 [640]

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

Tentative ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for defendants SK PM Corp.; Scott Salyer Revocable Trust; SSC&L 2007 Trust; Monterey Peninsula Farms, LLC; Frederick Scott Salyer; and Fast Falcon, LLC. The notice of hearing did not purport to require that opposition be filed in advance of the hearing date; thus, the court will hear opposition, if any, at the hearing.

However, the court will, in any event, deny Ms. Wright's request to be permitted to withdraw "as of January 30, 2014" or "as of the date hereof" (the date of the motion). Permitting withdrawal as of either date would operate as a circumvention of this court's local rule, which permits withdrawal only upon noticed motion and notice to the client and all other parties who have appeared. See LBR 2017-1(e).

The court will hear the matter.

26. 09-29162-D-11 SK FOODS, L.P.
11-2339 KAW-1
BANK OF MONTREAL V. CALIFORNIA FRANCHISE TAX BOARD ET AL

MOTION BY KIMBERLY A. WRIGHT TO WITHDRAW AS ATTORNEY
5-13-14 [364]

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

Tentative ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for defendants Frederick Scott Salyer and the Scott Salyer Revocable Trust. Plaintiff the Bank of Montreal ("BMO") has filed a limited opposition to the motion. The notice of hearing on the motion did not purport to require that opposition be filed in advance of the hearing date; thus, the court will hear opposition of other parties-in-interest, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

BMO has raised three objections of a technical nature: (1) that the notice of hearing does not advise potential respondents whether and when written opposition must be filed, as required by local rule; (2) the motion and supporting declaration do not include in the caption the date and time of the hearing or the courtroom where the hearing will be held; and (3) that the proof of service does not evidence service by mail on the defendants. As to the first two of these, in this particular instance, the court finds that the moving party substantially complied with the applicable rules. The notice of hearing did not purport to require written opposition, so the additional cautionary language required by LBR 9014-1(d)(3) was not required here. And the notice of hearing includes, in two places, the date and time of the hearing, the address of the courthouse, and the courtroom where the hearing will be held. The court concludes that sufficient information has been provided to the defendants to enable them to oppose the motion if they choose. As to the third issue, however, the moving party will be required to file a corrected proof of service.[1]

Finally, BMO complains about Ms. Wright's statement that her clients "confirmed [her] withdrawal/termination on January 30, 2014, and informed [her] that new counsel was obtained, although the identity of new counsel was not provided." Citing the "revolving door" of attorneys who have appeared in this case for the defendants, and the resulting delays and increased costs, BMO's specific complaint is this:

> **Ms. Wright, however, does not submit a copy of any such confirmation or any other information establishing the authority of that person to act on behalf of the particular client. Additionally, no new counsel has appeared in any matter on behalf of any of her clients. Given the history of this and other matters before the Court, additional information regarding such confirmation should be required prior to Ms. Wright's withdrawal.**

BMO's Limited Objection, filed June 11, 2014, at 3:21-25. The court disagrees. Subject to opposition that may be offered by Ms. Wright's clients, if any, the court finds that her declaration sufficiently demonstrates cause for permissive withdrawal under the Rules of Professional Conduct; confirmation by the client of the attorney's "withdrawal/termination" is simply not required for a motion to withdraw as counsel. Further, there is no legal basis on which to tie Wright's withdrawal as

counsel to the appearance of new counsel.

The court will, however, deny Ms. Wright's request to be permitted to withdraw "as of January 30, 2014" or "as of the date hereof" (the date of the motion). Permitting withdrawal as of either date would operate as a circumvention of the local rule, which permits withdrawal only upon noticed motion and notice to the client and all other parties who have appeared. See LBR 2017-1(e).

The court will hear the matter.

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1 BMO arguably does not have standing to raise this issue. However, given the "revolving door" of attorneys who have represented the defendants and related parties in this and other adversary proceedings in this case, the court will require a corrected proof of service so there will be no ambiguity about the status of representation of the defendants in the event this motion is granted.

27.	09-29162-D-11 11-2340 BANK OF MONTREAL V. COLLINS ET AL	SK FOODS, L.P. KAW-1	MOTION BY KIMBERLY A. WRIGHT TO WITHDRAW AS ATTORNEY 5-14-14 [392]

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

Tentative ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for defendants Frederick Scott Salyer and Monterey Peninsula Farms, LLC. Plaintiff the Bank of Montreal ("BMO") has filed a limited opposition to the motion. The notice of hearing on the motion did not purport to require that opposition be filed in advance of the hearing date; thus, the court will hear opposition of other parties-in-interest, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

BMO has raised three objections of a technical nature: (1) that the notice of hearing does not advise potential respondents whether and when written opposition must be filed, as required by local rule; (2) the motion and supporting declaration do not include in the caption the date and time of the hearing or the courtroom where the hearing will be held; and (3) that the proof of service does not evidence service by mail on the defendants. As to the first two of these, in this particular instance, the court finds that the moving party substantially complied with the applicable rules. The notice of hearing did not purport to require written opposition, so the additional cautionary language required by LBR 9014-1(d)(3) was not required here. And the notice of hearing includes, in two places, the date and time of the hearing, the address of the courthouse, and the courtroom where the hearing will be held. The court concludes that sufficient information has been provided to the defendants to enable them to oppose the motion if they choose. As to the third issue, however, the moving party will be required to file a corrected proof of service.1

Finally, BMO complains about Ms. Wright's statement that her clients "confirmed [her] withdrawal/termination on January 30, 2014, and informed [her] that new counsel was obtained, although the identity of new counsel was not provided."

Citing the "revolving door" of attorneys who have appeared in this case for the defendants, and the resulting delays and increased costs, BMO's specific complaint is this:

> **Ms. Wright, however, does not submit a copy of any such confirmation or any other information establishing the authority of that person to act on behalf of the particular client. Additionally, no new counsel has appeared in any matter on behalf of any of her clients. Given the history of this and other matters before the Court, additional information regarding such confirmation should be required prior to Ms. Wright's withdrawal.**

BMO's Limited Objection, filed June 11, 2014, at 3:21-25. The court disagrees. Subject to opposition that may be offered by Ms. Wright's clients, if any, the court finds that her declaration sufficiently demonstrates cause for permissive withdrawal under the Rules of Professional Conduct; confirmation by the client of the attorney's "withdrawal/termination" is simply not required for a motion to withdraw as counsel. Further, there is no legal basis on which to tie Wright's withdrawal as counsel to the appearance of new counsel.

The court will, however, deny Ms. Wright's request to be permitted to withdraw "as of January 30, 2014" or "as of the date hereof" (the date of the motion). Permitting withdrawal as of either date would operate as a circumvention of the local rule, which permits withdrawal only upon noticed motion and notice to the client and all other parties who have appeared. See LBR 2017-1(e).

The court will hear the matter.

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1 BMO arguably does not have standing to raise this issue. However, given the "revolving door" of attorneys who have represented the defendants and related parties in this and other adversary proceedings in this case, the court will require a corrected proof of service so there will be no ambiguity about the status of representation of the defendants in the event this motion is granted.

28.	09-29162-D-11 11-2348 SHARP V. BLACKSTONE RANCH CORPORATION ET AL CASE DISMISSED 5/12/14	SK FOODS, L.P. KAW-1	MOTION BY KIMBERLY A. WRIGHT TO WITHDRAW AS ATTORNEY 5-14-14 [155]

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

Tentative ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for defendants Blackstone Ranch Corporation and SS Farms, LLC. The notice of hearing did not purport to require that opposition be filed in advance of the hearing date; thus, the court will hear opposition, if any, at the hearing.

However, the court will, in any event, deny Ms. Wright's request to be permitted to withdraw "as of January 30, 2014" or "as of the date hereof" (the date of the motion). Permitting withdrawal as of either date would operate as a

circumvention of this court's local rule, which permits withdrawal only upon noticed motion and notice to the client and all other parties who have appeared. See LBR 2017-1(e).

The court will hear the matter.

29.	13-35762-D-12 MF-9	JOSE DASILVA	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MARCELLA I. COCA 5-27-14 [132]
30.	13-28369-D-7 DL-1	EDWIN GERBER	CONTINUED MOTION TO COMPEL ABANDONMENT 2-5-14 [107]
31.	13-28369-D-7 PA-6	EDWIN GERBER	CONTINUED COUNTER MOTION TO EMPLOY KATZAKIAN REAL ESTATE AS REAL ESTATE BROKERS 2-14-14 [126]

32. 13-28369-D-7 EDWIN GERBER — CONTINUED MOTION TO DISMISS FOURTH CAUSE(S) OF ACTION FROM COMPLAINT
14-2003 DL-1
BELL V. GERBER
2-4-14 [8]

33. 14-21674-D-7 ROBERT/MICHELLE REESE — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
TOYOTA MOTOR CREDIT CORPORATION VS.
5-20-14 [18]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on June 10, 2014 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

34. 14-23676-D-7 MAURICE/CHANDA BELL — MOTION FOR RELIEF FROM AUTOMATIC STAY
MRG-1
5-22-14 [13]
ONEWEST BANK, N.A. VS.

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.

35. 11-24177-D-7 SCOTT/ROBIN PAYTON — MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR HUISMAN AUCTIONS, INC., AUCTIONEER(S)
ICE-2
5-27-14 [116]

Final ruling:

This is the trustee's motion to sell a 34' Toy trailer at public auction, and to compensate the auctioneer, Huisman Auctions, Inc. The motion will be denied for the following reasons. First, with two exceptions, the moving party failed to serve any of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g). Second, although the caption of the notice of hearing correctly states the location of the courthouse where the

hearing is to be held, the text gives the location as 1200 I Street, Sacramento. Where the motion is brought pursuant to LBR 9014-1(f)(2) (no written opposition required), as here, it is especially important that the location of the hearing be correctly stated. Third, the notice of hearing, which is the only document served on creditors, does not sufficiently describe the nature of the relief being requested, and does not set forth the essential facts necessary for a party to determine whether to oppose the motion, as required by LBR 9014-1(d)(4). The notice describes the asset to be sold, but does not describe the compensation proposed to be paid to the auctioneer.

Fourth, the proof of service does not adequately demonstrate that service was made. It states that the declarant served the documents "[b]y placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, and depositing said envelope into an inter-office delivery receptacle, or by placing said envelope in the United States Post Office mailbox . . . ." Proof of Service, filed May 27, 2014, at 2:1-3. Evidence that the envelopes were deposited in an inter-office delivery receptacle does not constitute evidence the documents were actually served by first-class mail (or at all).

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

36. 11-22685-D-7 BCP-3 — BLUE RIBBON STAIRS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY — 5-20-14 [1146]

CAPITAL PACIFIC HOLDINGS, LLC VS.

Final ruling:

This matter is resolved without oral argument. This is Capital Pacific Holdings, LLC's motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

37. 14-24788-D-11 RLC-1 — CHRISTIAN/AMANDA BADER — MOTION TO EMPLOY STEPHEN M. REYNOLDS AS ATTORNEY — 5-20-14 [23]

38. 14-23398-D-7 JANE LYNCH
PD-1
ONEWEST BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-15-14 [32]

Final ruling:

This matter is resolved without oral argument. This is Onewest Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

39. 12-37801-D-7 SALVADOR/JOANNE MARTINEZ
TJW-2

MOTION TO AVOID LIEN OF KELKRIS ASSOCIATES, INC
6-3-14 [34]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Kelkris Associates, Inc. The motion will be denied because the notice of hearing does not comply with the court's local rules. The motion was brought on 22 days' notice; thus, no written opposition was required. LBR 9014-1(f)(2)(C). "The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." LBR 9014-1(d)(3). Here, the notice of hearing does not state that written opposition is not required, and it purports to require service of written opposition on certain parties, which is not required by the rule.[1] The rules are clear: when fewer than 28 days' notice is given, "no party-in-interest shall be required to file written opposition to the motion," and the notice of hearing must state whether written opposition is required. The rules also require that notice be given of the names and addresses of persons who must be served with any opposition (LBR 9014-1(d)(3)); that part of the rule, however, applies only when written opposition is required. The rules are not intended to be manipulated by a moving party's counsel to see how close he or she can come to compliance, while hiding the ball to the extent possible from potential respondents.[2]

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

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1 The notice states: "OPPOSITION, if any, must be presented at the hearing. Failure to so appear, and oppose, may result in the granting of the motion or other and further relief, as the Court deems appropriate. Written opposition, also, may be filed with the Court. A copy of said written opposition, as filed with the Court, must be mailed to debtor's attorney at the above address, and the U.S. Trustee at 501 I st. 7th floor, Sacramento Ca. 95812. However, written opposition is not a substitute for the requirement to appear on the date stated to oppose the motion."

2 The court notes that the moving parties' counsel recently filed several motions in another case – in each instance, the notice of hearing states, "No written opposition is required." That language has been removed from the notice of hearing of this motion.

40. 12-37801-D-7 SALVADOR/JOANNE MARTINEZ — MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
TJW-3 — 6-3-14 [39]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Midland Funding LLC (the "creditor"). The motion will be denied for two reasons. First, the moving parties failed to serve the creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the creditor (1) through the attorneys who obtained its abstract of judgment, and (2) to the attention of an agent for service, at an address that is not the address of the creditor's agent for service of process. The first method was insufficient because there is no evidence the attorneys are authorized to accept service of process for the creditor pursuant to Fed. R. Bankr. P. 7004(b)(3) in bankruptcy adversary proceedings and contested matters. See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because where service is made to the attention of an agent for service of process, it must be to the attention of an agent actually authorized by appointment or by law to receive service of process. See Fed. R. Bankr. P. 7004(b)(3). The court takes judicial notice that the California Secretary of State shows the address used by the moving parties as the address of the creditor, not the address of its agent for service of process, Corporation Service Company.

Second, the notice of hearing does not comply with the court's local rules. The motion was brought on 22 days' notice; thus, no written opposition was required. LBR 9014-1(f)(2)(C). "The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." LBR 9014-1(d)(3). Here, the notice of hearing does not state that written opposition is not required, and it purports to require service of written opposition on certain parties, which is not required by the rule.[1] The rules are clear: when fewer than 28 days' notice is given, "no party-in-interest shall be required to file written opposition to the motion," and the notice of hearing must state whether written opposition is required. The rule also requires that notice be given of the names and addresses of persons who must be served with any opposition (LBR 9014-1(d)(3)); that part of the rule, however, applies only when written opposition is required. The rules are not intended to be manipulated by a moving party's counsel to see how close he or she can come to compliance, while hiding the ball to the extent possible from potential respondents.[2]

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

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1 The notice states: "OPPOSITION, if any, must be presented at the hearing. Failure to so appear, and oppose, may result in the granting of the motion or other and further relief, as the Court deems appropriate. Written opposition, also, may be filed with the Court. A copy of said written opposition, as filed with the Court, must be mailed to debtor's attorney at the above address, and the U.S. Trustee at 501 I st. 7th floor, Sacramento Ca. 95812. However, written opposition is not a substitute for the requirement to appear on the date stated to oppose the motion."

2 The court notes that the moving parties' counsel recently filed several motions in another case – in each instance, the notice of hearing states, "No written opposition is required." That language has been removed from the notice of hearing of this motion.

41. 12-40315-D-11 FJA-1 — OLUSEGUN/YVONNE LERAMO — MOTION TO REMOVE TRUSTEE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7
6-11-14 [140]

Final ruling:

This is the debtors' motion to remove the chapter 11 trustee and/or to convert this case to chapter 7. As the trustee correctly points out, the moving parties failed to give sufficient notice of the request for conversion. See Fed. R. Bankr. P. 2002(a)(4). Thus, the court will continue the hearing to July 9, 2014, at 10:00 a.m., the moving parties to file a notice of continued hearing and serve it, no later than June 25, 2014, on the trustee, his attorney, the United States Trustee, and all creditors, and to file a proof of service no later than June 27, 2014. The notice of continued hearing, together with the original notice, will provide the required amount of notice. The notice of continued hearing is to be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required). The moving parties' motion to convert will be considered with the trustee's motion to convert, set for the same date and time.

As for the moving parties' request that the chapter 11 trustee be removed, that request will be moot if this case is converted to chapter 7. If the case is not converted on July 9, 2014, the court will take up the issue of removal of the chapter 11 trustee. No appearance is necessary.

42. 13-20823-D-11 MHK-14 — MELVIN/DARLENE SHIMADA — MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
6-3-14 [386]

43. 14-20031-D-7 UST-2 — ALFONSO MALDONADO AND CONSUELO LARIOS — CONTINUED MOTION FOR IMPOSITION OF CIVIL PENALTY, FOR SANCTIONS AGAINST DEBTORS' ATTORNEY FOR MISCONDUCT UNDER FRBP 9011 AND TO DISGORGE FEES
5-7-14 [23]

Final ruling:

This matter has been resolved by stipulated order entered June 19, 2014. As a result the motion is removed from calendar. No appearance is necessary.

44. 14-25148-D-12 HENRY TOSTA
MF-5

MOTION TO EMPLOY MATTHEW J. OLSON AS ATTORNEY(S)
6-4-14 [55]

Tentative ruling:

This is the debtor's motion to employ counsel. The court intends to continue to hearing to permit the moving party to serve creditors who were omitted from the service list. These include the County of San Joaquin, listed on the debtor's Schedule D; Benji Villa, Elizabeth LeMay, Enrique Garcia Vargas, and the Franchise Tax Board, listed on Schedule E; Armando and Maria Pina, CarrieAnne Caffey, G & S Cattle, Harold Van Vliet Trucking, Home Depot, Jennifer Bogetti, M. Costa, Mark and Colleen Johnson, NFC Pipe Company, Regional Water Quality Control Board, Ronald Van Leachman, Suburban Propane, and Valley Pacific Petroleum Services, listed on Schedule F; and Barney Roen, listed on Schedule G.

The court has an additional concern. According to the supporting declaration, the firm received a $25,000 retainer "from Henry J. Tosta, Jr., the chapter 12 debtor, and has an agreement [to] receive payments from Mr. Tosta as the case progresses." By contrast, the statement of financial affairs indicates the debtor paid the firm $12,746. The statement of affairs in a related case, Case No. 14-25150, indicates the debtor in that case paid the firm another $12,746. The court cautions counsel that the two cases have not been consolidated, and the court will require further explanation of the relationship between the two debtors. Counsel will need to supplement the record to provide specific information as to which debtor made the pre-petition payment and the source of the money paid. Additionally, the record needs to be supplemented to provide information as to whether either debtor asserts a claim against the other or is a creditor of the other.

The court will hear the matter.

45. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2485 KBP-2
BURKART V. PRASAD

MOTION TO SUBSTITUTE ATTORNEY
6-3-14 [67]

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 of defendant to substitute in as in propria perona and for withdrawal of Diamond McCarthy, LLC as counsel of record is supported by the record. As such the court will grant the motion of defendant to substitute in as in propria perona and for withdrawal of Diamond McCarthy, LLC as counsel of record. Moving party is to submit an appropriate order. No appearance is necessary.

46. 14-25150-D-12 MF-5 — HENRY TOSTA, JR. FAMILY, L.P. — MOTION TO EMPLOY MATTHEW J. OLSON AS ATTORNEY(S) 6-4-14 [55]

Tentative ruling:

This is the debtor's motion to employ counsel. The court intends to continue to hearing to permit the moving party to serve creditors who were omitted from the service list. These include Harold Van Vliet Trucking, listed on the debtor's Schedule D; Armando and Maria Pina, CarrieAnne Caffey, Mark and Colleen Johnson, and the Franchise Tax Board, listed on Schedule E; G & S Cattle, Home Depot, Jennifer Bogetti, Marian Costa, NFC Pipe Company, Regional Water Quality Control Board, Suburban Propane, and Valley Pacific Petroleum Services, listed on Schedule F; and Joseph Pina, Ralph Pina, and Viviana Pina, listed on Schedule G.

The court has an additional concern. According to the supporting declaration, the firm received a $25,000 retainer "from Henry J. Tosta, Jr., the chapter 12 debtor, and has an agreement [to] receive payments from Mr. Tosta as the case progresses." Mr. Tosta is not the debtor in this case, and the declaration does not indicate whether the firm received a retainer from the debtor in this case. The disclosures of compensation filed in the two cases conflict with the declaration supporting this motion – they state that "the Debtors" paid the firm a $25,000 retainer. The matter is somewhat clarified by the statements of financial affairs in the two cases, which indicate that each debtor paid the firm $12,746, for a total of $25,492. The court cautions counsel that the two cases have not been consolidated, and the court will require further explanation of the relationship between the two debtors. Counsel will need to supplement the record to provide specific information as to which debtor made the pre-petition payment and the source of the money paid. Additionally, the record needs to be supplemented to provide information as to whether either debtor asserts a claim against the other or is a creditor of the other.

The court will hear the matter.

47. 13-31754-D-11 VP-1 — VICTOR/SVETLANA PARSHIN — CONTINUED MOTION TO CONVERT CASE CHAPTER 13 5-8-14 [89]

48.	14-24855-D-7 EGS-1 GUILD MORTGAGE COMPANY VS.	MICHAEL BEVERIDGE AND CHARLENE SEARING	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-4-14 [13]

49.	09-91476-D-7 JCK-4	KARLA CHANCELLOR	MOTION TO AVOID LIEN OF FINANCIAL PACIFIC LEASING, LLC 6-9-14 [29]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Financial Pacific Leasing, LLC. The motion will be denied because there is no proof of service on file, and a proof of service filed at this time would not be in compliance with LBR 9014-1(e)(2) [proof of service to be filed within three days after documents are filed].

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

50.	10-36676-D-7 GJH-3	SUNDANCE SELF-STORAGE-EL DORADO LP	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PENINSULA CAPITAL GROUP, LLC, HOWARD A. BROWN, AND DONALD SMITH 6-4-14 [555]

51.	13-28288-D-7 TMP-2	MICHAEL MATRACIA	CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO VACATE DISCHARGE OF DEBTOR(S) 4-23-14 [87]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion to dismiss this chapter 7 case. The motion was brought pursuant to LBR 9014-1(f)(2), and the hearing was continued for the trustee to file opposition and the debtor to file a reply. The trustee filed opposition; the debtor has not filed a reply. For the following reasons, the motion will be denied.

The motion states that the debtor has provided all of the information and documents requested by the trustee, and that the debtor does not wish to discharge his debts but to "reorganize [them] to a manageable amount." Debtor's Motion to Dismiss, filed April 23, 2014, at 9-10. Thus, he asks the court to dismiss the case and vacate the discharge that has already been entered.

The trustee has filed opposition indicating that the debtor has finally appeared at the meeting of creditors (but, as she notes, only after the court denied his first motion to dismiss the case), and that he has provided the information she has requested. She states that the debtor's schedules disclose non-exempt assets in the form of cash in the bank and equity in a ski boat totaling over $22,000 in value. In these circumstances, and as contrasted with the debtor's claim that he wishes to reorganize his debts to a manageable amount, the court concludes that the interests of creditors are better served by denying the motion to dismiss the case.

Further, the debtor has already received a chapter 7 discharge. He has submitted no authority for the proposition that the court may vacate a discharge simply because the debtor wishes to proceed outside of bankruptcy, and the court is not aware of any such authority. For both of these reasons, the motion will be denied by minute order. No appearance is necessary.

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1 On June 20 2014, after the hearing had been continued and the trustee had filed opposition, the debtor purported to withdraw this motion and to give notice that the hearing "is respectfully being removed from the calendar." However, a moving party may not unilaterally dismiss or withdraw a motion once opposition has been filed. Fed. R. Civ. P. 41(a)(1)(A) and (2), incorporated herein by Fed. R. Bankr. P. 9014(c) and 7041. For the same reason, there is no authority for a moving party in such a situation to remove a matter from the court's calendar.