UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 15, 2015 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

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1. 15-20600-D-11 SAEED ZARAKANI — MOTION FOR RELIEF FROM AUTOMATIC STAY
DB-1 — 6-16-15 [89]
VAN DE POL ENTERPRISES, INC.
VS.

Tentative ruling:

The court will use this hearing as a status conference on this motion.

2. 15-23600-D-7 DAVID/FALISIA SWOBODA — MOTION TO COMPEL ABANDONMENT
HLG-2 — 6-10-15 [24]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

3.	15-24202-D-7 LLS-1 GEORGE THEODOSY VS.	CHERYL MCNEIL	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-19-15 [17]

4.	15-20106-D-12 JPJ-1	TOMMY/LINDA THOMAS	OBJECTION TO CLAIM OF W.W. GRAINGER, INC., CLAIM NUMBER 15 5-19-15 [73]

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 debtor's objection to claim and the moving party is to submit an appropriate order. No appearance is necessary.

5.	13-24507-D-7 CWS-8	DKW PRECISION MACHINING INC.	CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF NEUMILLER & BEARDSLEE FOR CLIFFORD W. STEVENS, TRUSTEES ATTORNEY(S) 5-13-15 [193]

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.

6.	13-24507-D-7 CWS-9	DKW PRECISION MACHINING INC.	CONTINUED MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN, ACCOUNTANT(S) 5-13-15 [200]

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.

7. 13-27820-D-7 GILBERT/LISA GRANADOS — MOTION TO AVOID LIEN OF THE BEST SERVICE CO., INC.
LRR-2 — 6-5-15 [32]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by The Best Service Co. Inc. (the "Creditor"). The motion will be denied because 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 only through the attorney who obtained its abstract of judgment. This was insufficient because the rule requires that a corporation be served to the attention of an officer, managing or general agent, or agent authorized by appointment or by law to receive service of process. Here, there is no evidence the attorney who obtained the abstract of judgment is authorized to receive service of process on behalf of the Creditor in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

8. 15-24222-D-7 MERLE DICKSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 6-17-15 [9]
SANTANDER CONSUMER USA INC.
VS.

9. 15-24123-D-7 YNEZ MADRIGAL — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 6-16-15 [13]
AMERICREDIT FINANCIAL SERVICES, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Americredit Financial Services, Inc.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

10. 14-31929-D-7 MPD-6 — MEDICI LOGGING, INC. — MOTION FOR COMPENSATION FOR WEST AUCTIONS, AUCTIONEER(S) 6-9-15 [60]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for compensation for West Auctions, Auctioneer is supported by the record. As such the court will grant the motion for compensation for West Auctions, Auctioneer. Moving party is to submit an appropriate order. No appearance is necessary.

11. 13-23439-D-7 BHS-4 — JUST/VICKIE WILLIS — MOTION TO SELL 6-5-15 [73]

12. 11-36143-D-12 JPJ-2 — CHARLES YURGELEVIC — CONTINUED MOTION TO DISMISS CASE 3-26-15 [82]

13. 11-36143-D-12 SAC-7 — CHARLES YURGELEVIC — CONTINUED MOTION TO MODIFY CHAPTER 12 PLAN 4-8-15 [87]

14. 11-36143-D-12 SAC-8 — CHARLES YURGELEVIC — MOTION TO APPROVE LOAN MODIFICATION
6-9-15 [102]

15. 15-23746-D-7 BLF-1 — GORDON BONES — MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
6-7-15 [17]

16. 11-41448-D-7 PEQ-1 — GHANSHYAM/JIGNASA PATEL — MOTION FOR COMPENSATION FOR PAUL E. QUINN, ACCOUNTANT
6-2-15 [259]

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. 15-23448-D-7 PPR-1 DEUTSCHE BANK TRUST COMPANY AMERICAS VS. — LEAH DOMINICK — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
6-4-15 [14]

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank Trust Company Americas' 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.

18. 14-30752-D-7 ANDREW BRUNT
MAS-1

MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT
5-29-15 [49]

19. 09-29162-D-11 SK FOODS, L.P.
14-2220
WESTLAND INSURANCE COMPANY V. SHARP ET AL

CONTINUED MOTION FOR ORDER AUTHORIZING DISCHARGE OF STAKEHOLDER WESTLAND INSURANCE COMPANY IN INTERPLEADER ACTION
2-11-15 [23]

Final ruling:

The hearing on this motion is continued to July 29, 2015 at 10:00 a.m. No appearance is necessary on July 15, 2015.

20. 14-20064-D-7 GLENN GREGO
15-2042 DKE-3
GREGO V. PACIFIC WESTERN BANK

MOTION TO DISMISS CAUSE(S) OF ACTION FROM AMENDED COMPLAINT
6-12-15 [50]

Tentative ruling:

This is the motion of defendant Pacific Western Bank (the "Bank") to dismiss the amended complaint of the plaintiff, Glenn Grego, who is the debtor in the chapter 7 case in which this adversary proceeding is pending (the "debtor"), pursuant to Fed. R. Civ. P. 12(b)(6), made applicable herein by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted.[1] The debtor has filed opposition and the Bank has filed a reply. For the following reasons, the motion will be denied.

In ruling on a Rule 12(b)(6) motion, a court "accept[s] as true all facts alleged in the complaint, and draw[s] all reasonable inferences in favor of the plaintiff." al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Newcal Indus., Inc. v. Ikon Office Solution, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court assesses whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd, 580 F.3d at 949, citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has facial

plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678, citing Twombly, 550 U.S. at 556, 570.

The debtor's complaint in this adversary proceeding is in essence an objection to the Bank's claim filed in the underlying chapter 7 case, Claim No. 5.[2] [3] As permitted by Fed. R. Bankr. P. 3007(b), the objection was filed as an adversary complaint which includes a request for additional relief in the form of declaratory relief.

The Bank's claim is based on an order issued by the bankruptcy court for the Central District of California in an earlier case filed by the debtor, Case No. 11-10391. By order filed October 5, 2011 (the "Contempt Order"), the Central District bankruptcy court held the debtor in contempt of court for failing to comply with an earlier order, filed July 26, 2011 (the "Accounting Order"), to account for his use of the cash collateral of the Bank's predecessor, First California Bank. By the Contempt Order, the court ordered the debtor to pay the Bank $3,500 in attorney's fees and $100 per day until the debtor complied with the Accounting Order. The Bank takes the position that the debtor has never complied with the Accounting Order, and therefore, that the $100 sanction continued to accrue daily until the day the debtor commenced the present case.

The Bank's Res Judicata Argument

As a preliminary matter, the Bank contends this court's order overruling the debtor's objection to the Bank's claim in the underlying chapter 7 case is entitled to res judicata effect, and thus, that the order defeats the debtor's complaint in its entirety. In the Bank's view,

> Debtor had the right to object to Bank's claim either by taking advantage of this Court's expedited procedures by objecting to the claim in the underlying bankruptcy case *or* pursuing this adversary proceeding, but he does not get to try both in the event he was unsuccessful in the first instance. But by pursuing an objection in the Underlying Bankruptcy, Debtor is bound by the results of his objection and has effectively foregone his rights to pursue this adversary.

Bank's Memorandum of Points and Authorities, filed June 12, 2015 ("Bank's Memo."), at 7:27-8:6.

Neither of the cases cited by the Bank supports its position that a debtor must choose between an objection to claim as a contested matter and as an adversary proceeding and is bound by the ruling on the first one he chooses to pursue. The first case, Garner v. Shier (In re Garner), 246 B.R. 617 (9th Cir. BAP 2000), involved an appeal from an order overruling a debtor's objection to a proof of claim, not a second objection to claim or an objection by way of an adversary proceeding. The second, Moi v. Asset Acceptance LLC (In re Moi), 381 B.R. 770 (Bankr. S.D. Cal. 2008), involved an adversary proceeding in which the debtors objected to a creditor's claim and also sought an order of contempt. The court simply rejected the defendant's argument that an objection to claim may not be brought by adversary proceeding. Id. Neither case supports the Bank's proposition that a debtor "does not get to try both [an objection to claim and an adversary

proceeding] in the event he was unsuccessful in the first instance." Bank's Memo. at 8:1-2.

In the present case, the court overruled the debtor's objection to claim in the parent case on several procedural grounds and because the grounds for the objection were fact-based and not apparent from the face of the proofs of claim, whereas the debtor had not submitted any evidence establishing his factual allegations and demonstrating the claims should be disallowed. The debtor did not appeal; instead, he apparently decided to rely solely on this adversary proceeding, which he had filed the same day he filed his objection to claim. Neither the order nor the ruling underlying it indicated the objection was overruled with prejudice, and nothing suggested the court would not entertain the objection to claim as set forth in the pending adversary proceeding.

The Bank cites Siegel v. Federal Home Loan Mortg. Corp., 143 F.3d 525 (9th Cir. 1998), and Bevan v. Socal Communs. Sites, LLC (In re Bevan), 327 F.3d 994 (9th Cir. 2003), for the proposition that the court's order overruling the debtor's claim objection was a final order on the validity of the claim. Those two cases cited earlier case law for the general proposition that the allowance or disallowance of a proof of claim in a bankruptcy case "furnishes a basis for a plea of res judicata." Siegel, 143 F.3d at 529; Bevan, 327 F.3d at 997 (citations omitted). Neither case, however, supports the conclusion that an order overruling a claim objection based on procedural defects and insufficient evidence, although it becomes a final order, necessarily has res judicata effect.

In Siegel, the court held that a creditor's proof of claim is deemed allowed in a case where neither the debtor nor the trustee objected to the claim before the case was closed (143 F.3d at 530), and that such a de facto allowance may be given res judicata effect when the debtor later sues the creditor on theories the debtor could have raised if he had objected to the proof of claim. Id. at 531. In Bevan, the court cited the general proposition that the allowance or disallowance of a claim may form a basis for res judicata only as it pertained to an order of the bankruptcy court allowing a creditor's claim after the debtor's objection was litigated. See 327 F.3d at 996, 997. In the present case, the parties did not fully litigate the objection and the court did not rule on the merits.

Finally, the Bank cites Brady v. United States Dep't of the Treasury (In re Brady), 200 B.R. 178 (Bankr. S.D. Ohio 1996), and Nathanson v. Hecker, 99 Cal. App. 4th 1158 (2002), as similar to the facts in this case. They are not. In both cases, the orders given res judicata effect allowed the creditors' claims in precise amounts; both orders appear to have been issued following full litigation of the objections. In sharp contrast, the debtor's objection to the Bank's claim was resolved by final ruling in advance of the hearing; the court did not hear oral argument. The court's ruling stated only that "[a]s a result of the procedural and evidentiary defects described above, the objection will be overruled by minute order" (see civil minutes filed April 29, 2015, DN 323 in the parent case); the minute order stated only that the objection to claim was overruled. In short, the order overruling the objection to claim was not a final judgment on the merits, as required for application of res judicata. See Western Radio Servs. Co. v. Glickman, 123 F.3d 1189, 1192 (9th Cir. 1997).[4]

Effect of the Debtor's Discharge

Section 523(a)(7)

The debtor alleges in his complaint that the obligation evidenced by the Contempt Order was discharged by the debtor's discharge in the prior case. The Bank contends its claim survived the discharge. The debtor filed a chapter 11 petition commencing the prior case on January 27, 2011. A chapter 11 trustee was appointed on April 11, 2011. The case was converted to chapter 7 on February 28, 2012, and the debtor received a discharge on September 7, 2012. The Bank calculates its claim in this case based on the number of days between the date of conversion of the prior case and the date of commencement of the present case, 674 days at $100 per day, for a total of $67,400. Because the Contempt Order was issued before the prior case was converted and the debtor's obligations under the Contempt Order arose at the time the order was issued, the court concludes that the debtor's obligations under the order are covered by the discharge.

A chapter 7 discharge "discharges the debtor from all debts that arose before the date of the order for relief under [chapter 7] . . . ." 11 U.S.C. § 727(b). (Unless otherwise indicated, all statutory references are to the Bankruptcy Code, Title 11, United States Code.) "Unless the court for cause orders otherwise, in section[] . . . 727(b) . . ., 'the order for relief under this chapter' in a chapter to which a case has been converted . . . means the conversion of such case to such chapter." § 348(b). Further, "[a] claim against the estate or the debtor that arises after the order for relief but before conversion . . . other than a claim specified in section 503(b) of this title [administrative claims], shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition." § 348(d). Thus, in this case, to the extent the Bank's claim under the Contempt Order "arose" before the date the debtor's prior case was converted, February 28, 2012, the debtor's obligations on the claim have been discharged unless otherwise excepted from discharge.

The Bank contends its claim is nondischargeable under § 523(a)(7) because the sanction imposed by the Contempt Order was a coercive sanction issued to uphold the authority and dignity of the court. With an exception not relevant here, § 523(a)(7) provides that a bankruptcy discharge does not discharge a debt "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss . . . ." As discussed below, there is some case law to the effect that the "payable to and for the benefit of a governmental unit" requirements are satisfied where the fine or penalty was issued to uphold the authority and dignity of the court, such as a sanction imposed to compel a party to obey a court order.

The debtor contends the Contempt Order "was related to collection of and imposition of a possible judgment for money as the result of the alleged use of cash collateral otherwise belonging to the predecessor of [the Bank]." Debtor's Opposition, filed June 30, 2015, at 2:19-21. Thus, in the debtor's view, the order "was designed for the benefit of the predecessor to [the Bank] and did not constitute an order central to the dignity of the Court." Id. at 4:18-20. The court disagrees. The Contempt Order was issued to compel the debtor to comply with an earlier order requiring him to account for his use of cash collateral of the Bank's predecessor during the time the debtor was a debtor-in-possession. Although the Bank might thereafter have sought a judgment for the debtor's improper use of the cash collateral, the purpose of the daily $100 sanction was not to compensate

the Bank or to effectuate the collection of an existing judgment or other debt, it was to compel the debtor to obey an earlier order of the court. Thus, the court finds that the Contempt Order was issued to uphold the authority and dignity of the court.

However, for a different reason, the court does not agree with the Bank's conclusion that the Contempt Order is nondischargeable under § 523(a)(7). The Bank cites Hansbrough v. Birdsell (In re Hercules Enters.), 387 F.3d 1024, 1029 (9th Cir. 2004), in which the court stated that "[u]nder 11 U.S.C. § 523(a)(7), civil contempt sanctions are generally non-dischargeable where, as here, they are imposed to uphold the dignity and authority of the court." Although that was not the holding of the case and was not necessary to the holding,[5] the court suggested that sanctions such as those imposed in the case before it – against a corporate debtor's president for his repeated failures to turn over or disclose the whereabouts of certain equipment to the trustee – "are generally not dischargeable under § 523(a)(7)." Id. at 1029.

As the Bank notes, the court also cited, apparently with approval, PRP Wine Int'l v. Allison (In re Allison), 176 B.R. 60 (Bankr. S.D. Fla. 1994), and US Sprint Communications Co. v. Buscher, 89 B.R. 154 (D. Kan. 1988). In Allison, the court held that under § 523(a)(7), "a fine or penalty need not be payable to a governmental entity in order to be for the benefit of a governmental agency." 176 B.R. at 64. Thus, the court held nondischargeable a state court contempt order imposed against the debtor for violating a temporary injunction that prohibited him from contacting his former employer's customers and retaining possession of the employer's trade secrets, despite the fact that the contempt order was payable to the employer, a private entity. Id.

In Buscher, a federal district court held that its power to sentence the debtor for civil contempt for violating an earlier preliminary injunction was not subject to the automatic stay. 89 B.R. at 157. Although the court was dealing with § 362(a), it relied on three earlier cases (not from within the Ninth Circuit) that had held that a contempt fine intended to coerce a defendant to obey a court order is nondischargeable under § 523(a)(7), even though it is payable to a private party rather than a governmental unit. Id. at 155-56.

Noting that the Hercules language was dicta, and disagreeing with Allison, the district court for this district has recently held that all four elements of § 523(a)(7) must be met in order for a debt to be nondischargeable under that subdivision. Medina v. Vander Poel, 523 B.R. 820, 824 (E.D. Cal. Jan. 20, 2015). This court also disagrees with the dicta in Hercules and with Allison, and agrees with the contrary ruling in Sims v. DeMaskey (In re DeMaskey), 2008 Bankr. LEXIS 4228 (Bankr. W.D. Wash. 2008). In that case, the issue was whether a state court judgment against the debtors for violation of an earlier injunction was dischargeable under § 523(a)(7). The court noted that the statements in Hercules concerning contempt sanctions and § 523(a)(7) were dicta and disagreed with the Allison court's conclusion that "[i]n the case of contempt judgments, it is enough that the fine or penalty, although made payable to a party, be awarded to vindicate the dignity and authority of the court." DeMaskey, 2008 Bankr. LEXIS 4228, at *16, quoting Allison, 176 B.R. at 64.

The DeMaskey court agreed instead with Hughes v. Sanders, 469 F.3d 475, 479 (6th Cir. 2006), which held that under the plain language of § 523(a)(7), to be

nondischargeable, the fine or penalty must be payable to and for the benefit of a governmental unit. Hughes, 469 F.3d at 478. The Hughes court cited a number of other cases in which the courts held that to be nondischargeable under § 523(a)(7), the fine or penalty must be payable to a governmental unit.[6] This court agrees with that holding, and therefore, concludes that the Contempt Order is not excepted from discharge under § 523(a)(7).

> In drafting statutes, Congress is well aware of the distinct effect of using "and" rather than "or" in a phrase consisting of more than one element. In this case, "even if the 'for the benefit of a governmental unit' requirement is met by the abstract benefit of upholding 'the dignity of the court,' the debt cannot be held nondischargeable under section 523(a)(7) because it is not payable to a governmental unit."

Freelife Int'l, LLC v. Butler (In re Butler), 2005 Bankr. LEXIS 650, *12 (Bankr. D. Utah 2005), quoting Jeff-Mark Pshp. v. Friedman (In re Friedman), 253 B.R. 576, 579 (Bankr. S.D. Fla. 2000).

The Sanction As "Arising" Daily

The Bank also contends the debtor's obligation to pay $100 per day until he complied with the Contempt Order "arose" anew each day, and thus, for each day from the day the prior case was converted, the claim arose after the date of the order for relief under chapter 7. In the Bank's words,

> [t]he Contempt Order created a daily, ongoing, equitable obligation requiring Debtor to comply with the Accounting Order. The obligation, and resultant $100 per day sanction for non-compliance with the Contempt Order, survived Plaintiff's case conversion to one under Chapter 7 of Title 11, as well as his discharge.

Bank's Memo. at 11:21-24. The Bank begins with this statement: "Courts have addressed pre-petition injunctive relief coupled with a monetary penalty and found that such relief, including the penalty component, is not a claim subject to the discharge." Id. 11:25-12:2. The Bank, however, cites only two cases in support of this proposition; neither supports it, and the court is aware of no other cases that support it. Absent controlling or persuasive contrary authority, in the court's view, so far as the time the debtor's obligations under the Contempt Order "arose," the order is like any other instrument under which obligations arise. Thus, the debtor's obligations under the Contempt Order – the $100 sanction for each day prior to the date of conversion and for each day after that date – "arose" when the order was issued, which was prior to the conversion date. As a result, the claim was a pre-conversion claim and was covered by the discharge.

The Bank cites In re Chateaugay Corp., 112 B.R. 513 (S.D. Tex. 1990), which concerned the dischargeability of environmental cleanup claims, primarily claims under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq. The court began with the definition of a "claim" as a:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,

> unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

112 B.R. at 519-20, quoting § 101(5).[7] Quoting the legislative history of the statute, the court noted that "Congress intended that 'all legal obligations of the debtor, no matter how remote or contingent, [would] be able to be dealt with in the bankruptcy case.'" Chateaugay, 112 B.R. at 520.[8] The court considered the issue of when a claim under environmental statutes "arises," and held that "[w]here . . . there has been a pre-petition release or threatened release of hazardous waste, there does exist an event that would render any claims arising from that circumstance dischargeable pursuant to the broad definition of 'claim' set forth in the Bankruptcy Code." Id. at 522.

To this point, Chateaugay, if applicable at all, would appear to support the court's conclusion, not the Bank's. The Bank, however, relies on a footnote in the discussion in Chateaugay on the issue of "whether claims for injunctive relief based upon such pre-petition release or threatened release of hazardous waste are properly dischargeable." 112 B.R. at 522. The discussion centered on "whether EPA's right to recover [cleanup] costs renders the injunctive remedies it may seek dischargeable claims" within the meaning of the Code's definition of a "claim" as including a "right to an equitable remedy for breach of performance if such breach also gives rise to a right to payment." Id.

The court held that the EPA's right to recover cleanup costs is a "right to payment" within the meaning of the statute; thus, such costs are dischargeable. Chateaugay, 112 B.R. at 522.

> However, where there is no right to such payment for cleanup or other remedial costs, claims for injunctive relief do not fall within the Bankruptcy Act and are not dischargeable. These statutes [CERCLA and equivalent state statutes] provide for injunctive relief followed by civil penalties for non-compliance; they do not provide for government cleanup followed by an assessment of damages on responsible parties.

Id. at 523.[9] The court followed this holding with a footnote, the one on which the Bank relies:

> The fact that monetary penalties are available under these statutes if a party fails to comply with the injunction does not render these injunctive claims dischargeable. Such penalties, if imposed, are, at best, analogous to a contempt citation issued to force a party to comply with a court order. They do not provide an alternative right to compensatory payment for the cost of the cleanup.

Id. at 523, n.17. From this language, which is dicta and unsupported by authority, the Bank concludes as follows, with no other authority: "That the Contempt Order requires payment of money does not render it an 'alternative right to payment' of

the type within the contemplation of section 101(5), and it thus survives discharge." Bank's Memo. at 12:20-22.

The court is not persuaded by a non-essential footnote in a 25-year old non-binding case concerning environmental law, particularly where the Bank has been able to find no other authority. The Bank does cite Law v. Siegel, 134 S. Ct. 1188 (2014), but again, the language the Bank cites was dicta, and although persuasive, the language did not pertain to sanctions allegedly "arising" post-petition under a pre-petition sanctions order. In Siegel, the Court held that a bankruptcy court does not have the authority to surcharge a debtor's exemption to pay administrative expenses incurred as a result of the debtor's misconduct. 134 S. Ct. at 1195. The Court then mentioned other possible remedies for such misconduct such as denial of discharge, sanctions under Fed. R. Bankr. P. 9011, and sanctions under § 105(a) or the court's inherent powers. In doing so, the Court stated: "And because it arises postpetition, a bankruptcy court's monetary sanction survives the bankruptcy case and is thereafter enforceable through the normal procedures for collecting money judgments. See § 727(b)." Id. at 1198. It is that single sentence on which the Bank relies; it does so based solely on the fact that the Contempt Order was issued post-petition. The Bank acknowledges in a footnote that the Contempt Order was issued pre-conversion, but the Bank ignores § 348, under which, in a converted case, post-petition pre-conversion claims are treated as if they were pre-petition claims. The bankruptcy case in Siegel was not converted; further, all of the debtor's misconduct in that case was post-petition conduct. There is nothing in the decision that pertains or even hints at the issue of dischargeability of a daily sanction allegedly accruing post-conversion under a pre-conversion court order.

To conclude, the Bank has cited no authority for the proposition that the $100 per day sanctions ordered by the state court prior to the conversion of the debtor's prior case "arose" anew each day after the date of conversion for purposes of dischargeability. Indeed, it would be illogical to conclude that the sanctions for the days between the date the Contempt Order was issued and the date of conversion were discharged but the sanctions sprang to life again after the date of conversion. The court finds that the debtor's obligation to pay the sanctions arose out of the Contempt Order, and that the Bank's claim "arose," for purposes of determining dischargeability, when the Contempt Order was issued. As the Contempt Order was issued prior to the date of conversion, the claim is dischargeable. The Bank has raised several other issues in its motion. However, with this decision on the issue of the debtor's discharge, it is not necessary for the court to address the remaining issues.

For the reasons stated, the motion will be denied. In addition, the court will sua sponte, pursuant to Fed. R. Civ. P. 56(f), incorporated herein by Fed. R. Bankr. P. 7056, grant summary judgment in the debtor's favor, the parties having briefed the issues that are dispositive as to the effect of the debtor's discharge on the Bank's claim. The court finds that there is no genuine dispute as to any material fact on the issue of whether the Bank's claim has been discharged by the operation of the discharge the debtor received in the prior case, and the debtor is entitled to judgment as a matter of law. The court will enter a judgment sustaining the debtor's objection to the claim and disallowing the claim in its entirety.

The court will hear the matter.

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1 All subsequent references to the plaintiff's complaint will be to his amended complaint, filed May 15, 2015.

2 The complaint states that the debtor seeks to determine and prove the invalidity of the Bank's claim, "No. 5 and No. 5-1." The Bank filed its original proof of claim on November 17, 2014 and an amended proof of claim specifically amending the original one on March 23, 2015. The original and amended claims appear on the court's claims register as Claim Nos. 5-1 and 5-2. The court views the original claim as having been superseded by the amended claim, and thus, will construe the complaint as an objection to the amended claim, Claim No. 5-2.

3 As an objection to claim, this matter is a core proceeding. 28 U.S.C. § 157(b)(2)(B). The debtor asserted in the complaint that the proceeding is non-core and that he would not accept a bankruptcy judge presiding over it. The debtor's opposition to this motion and his memorandum of points and authorities reflect a good deal of confusion over the core/non-core issue. In any event, the court is satisfied this is clearly a core proceeding.

4 See also Moncur v. Agricredit Acceptance Co. (In re Moncur), 328 B.R. 183, 191 (9th Cir. BAP 2005) ["[W]e defer to the bankruptcy court's construction and interpretation of its own orders and local rules and forms. It created the order and is entitled to opine as to what it meant."].

5 The holding was that "[a] bankruptcy court cannot . . . adjudicate the subsequent dischargebility of a sanction properly imposed on a non-debtor." 387 F.3d 1026. In other words, a bankruptcy court may not include in a sanctions order against a corporate debtor's president a provision that the order will be nondischargeable in any bankruptcy case the debtor's president might file in the future.

6 See In re Rashid, 210 F.3d 201, 208 (3rd Cir. 2000) (restitution paid directly to victims was dischargeable because it was not payable to a governmental unit); In re Towers, 162 F.3d 952, 956 (7th Cir. 1998) (restitution paid to attorney general for redistribution to victims was dischargeable because it was not payable to and for the benefit of the state); In re Friedman, 253 B.R. 576, 578 (Bankr. S.D. Fla. 2000) (contempt judgment payable to litigant rather than governmental unit was not excepted from discharge); In re Wood, 167 B.R. 83, 88 (Bankr. W.D. Tex. 1994) (Rule 11 sanction payable to private litigant was not excepted from discharge because it was not payable to a governmental unit); In re Strutz, 154 B.R. 508, 510 (Bankr. N.D. Ind. 1993) ("the language of the statute is unambiguous . . . a debt must be payable to a governmental unit to be nondischargeable under § 523(a)(7).").

7 Chateaugay was a chapter 11 case. With certain exceptions, the confirmation of a plan discharges the debtor from any "debt" that arose before the date of confirmation. § 1141(d)(1)(A). As discussed above, a chapter 7 discharge discharges the debtor from all "debts" that arose before the date of the order for relief under chapter 7. § 727(b). "Debt" means "liability on a claim." § 101(12). "Claim," in turn, is defined in § 101(5); the definition is the same in chapter 7 and chapter 11 cases. § 103(a).

8 "The Code utilizes this 'broadest possible definition' of claim to ensure that 'all legal obligations of the debtor, no matter how remote or contingent, will be

able to be dealt with in the bankruptcy case.'" SNTL Corp. v. Ctr. Ins. Co. (In re SNTL Corp.), 571 F.3d 826, 838 (9th Cir. 2009) (citation omitted).

9 The reference to the Bankruptcy Act appears to have been simply a mistake. It is clear the case was decided under the Bankruptcy Code. See 112 B.R. at 517.

21.	14-27267-D-7 HSM-3	SARAD/USHA CHAND	MOTION FOR ORDER AUTHORIZING TRUSTEE TO OPERATE THE DEBTORS' REAL ESTATE BUSINESS 6-15-15 [126]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for order authorizing trustee to operate the debtors' real estate business is supported by the record. As such the court will grant the motion for order authorizing trustee to operate the debtors' real estate business. Moving party is to submit an appropriate order. No appearance is necessary.

22.	15-22377-D-7 BLG-2	SUSAN SMETTS	MOTION TO AVOID LIEN OF KELKRIS ASSOCIATES, INC. 6-10-15 [21]

Final ruling:

This is the debtor's motion to avoid a judicial lien she claims is held by Kelkris Associates, Inc. The motion will be denied because the actual judgment creditor, as named in the abstract of judgment, Kelstin Group, Inc., is not named in the moving papers and was not served. The court referred to these problems in its ruling denying an earlier motion; the problems have not been addressed or corrected by this new motion.

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

23.	15-20998-D-7 MDM-1	OSCAR ORTIZ	MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 6-4-15 [19]

Final ruling:

This is the trustee's motion for an extension of the time to object to the debtor's discharge. The motion was purportedly noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court is not prepared to consider the motion at this time for the following reasons. First, the motion was served on the debtor at an incorrect address. Second, the notice of hearing did not advise the debtor that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written

opposition, as required by LBR 9014-1(d)(4), and did not contain any similar caution. The court will continue the hearing to July 29, 2015 at 10:00 a.m., the moving party to file a notice of continued hearing and serve it, together with the motion and declaration, on the debtor at his address of record; the notice of continued hearing shall also be served on the debtor's counsel. The notice of continued hearing shall be pursuant to LBR 9014-1(f)(2) (no written opposition required). The hearing will be continued by minute order. No appearance is necessary on July 15, 2015.

24. 15-23698-D-7 KEVIN ADAMS
NLG-1
CENTRAL MORTGAGE COMPANY VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
6-17-15 [18]

Final ruling:

The moving party has been renoticed the hearing on this motion for July 29, 2015. Accordingly, the hearing is continued to July 29, 2015 at 10:00 a.m. No appearance is necessary on July 15, 2015.

25. 15-20600-D-11 SAEED ZARAKANI
MHK-4
MOTION TO USE CASH COLLATERAL
7-1-15 [105]

26. 14-29905-D-11 RAVINDER GILL
STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
10-2-14 [1]

27.	15-21934-D-7 DMW-5	JAMES/MONICA HODGES	MOTION TO SELL 6-25-15 [36]
28.	10-47536-D-7 CDH-3	DOUGLAS KIRKWOOD	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH AURORA LOAN SERVICES, LLC 6-24-15 [88]
29.	11-31046-D-7 HSM-1	DAVID FOYIL	CONTINUED MOTION TO EMPLOY HOWARD S. NEVINS AS ATTORNEY(S) AND/OR MOTION FOR COMPENSATION FOR HOWARD S. NEVINS, TRUSTEES ATTORNEY(S) 5-22-15 [203]
30.	15-23746-D-7 BLF-2	GORDON BONES	AMENDED MOTION TO COMPEL ABANDONMENT 6-25-15 [31]

31. 14-20064-D-7 GLENN GREGO
BHS-2

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH HERITAGE OAKS BANK AND SID PATEL, ROE PATEL, MARIN MANAGEMENT, INC. AND CAMBRIA INN, LLC
5-13-15 [328]

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

Tentative ruling:

This is the trustee's motion to approve a compromise and to sell and assign to certain persons and entities referred to in the motion as the "Motel Property Owner Defendants" all causes of action that the debtor and the estate may have against them in an action pending in the San Luis Obispo County Superior Court as Case No. CV 128369 (the "Lead Case"). The debtor has filed opposition and the trustee has filed a reply. For the following reasons, the motion will be granted and the court will entertain overbidding, if any, at the hearing.

Also pending in the San Luis Obispo County Superior Court are two other actions by the debtor against other defendants, which the state court has consolidated with the Lead Case. It is the court's understanding that the only claims being compromised and sold by way of this motion are those in the Lead Case itself, not those in the other two cases. The trustee proposes to compromise the debtor's and the estate's claims against the Motel Property Owner Defendants in the Lead Case in exchange for a $5,000 payment from them. The payment by the Motel Property Owner Defendants will be made without any admission of liability and will be a full and final resolution of all allegations against them in the Lead Case. The motion states (although the court has not located this provision in the settlement agreement) that the obligations of the Motel Property Owner Defendants under the compromise are conditioned on entry of a final non-appealable order of this court approving the agreement that expressly states that the debtor and all creditors of the debtor are bound by the agreement and are barred and prohibited from subsequently pursuing any and all manner of claims, causes of action, suits, proceedings, debts, dues, judgments, damages and all other claims of every kind, nature or description whatsoever that the trustee is releasing in the agreement. The settlement includes mutual releases.

The trustee has cast the motion as both a motion to approve a compromise and a motion to approve the sale and assignment of the claims, as is appropriate under Ninth Circuit law. See In re Lahijani, 325 B.R. 282, 284 (9th Cir. BAP 2005); Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R. 415, 421 (9th Cir. BAP 2003). Thus, the court will consider the trustee's analysis of the compromise, discussed below, and will entertain overbids at the hearing, on the terms proposed in the motion. The first overbid, if any, must be at least $5,500; succeeding bids must be in minimum increments of $500. The trustee also seeks a waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h), which the court will grant.

The motion is supported not only by the trustee's declaration but by several other declarations and exhibits. First, the trustee has submitted a declaration of

the attorney for Heritage Oaks Bank (the "Bank"), one of the Motel Property Owner Defendants, who represented the Bank's predecessor in interest in the state court litigation. The attorney testifies to the facts leading up to the filing of the Lead Case by the debtor and to what has happened in that case since it was filed, including the sustaining of a demurrer and the granting of a motion to strike which eliminated the debtor's claims for intentional destruction of property and negligent failure to perform as a bailee, as well as his claims for punitive damages, leaving only his claims for conversion.[1] The attorney also testifies to certain of the debtor's discovery responses in the state court litigation that tend to undercut the validity of his claims for conversion. Finally, the attorney testifies that the state court has ruled the debtor does not have standing to pursue any of the claims in the Lead Case, as they are now property of the bankruptcy estate in this case.

The trustee has also submitted a declaration of the Special Assets Officer / Special Assets / Loan Resolution Officer for the Bank, who authenticates the loan documents evidencing and securing the Bank's predecessor's loan to the debtor on the motel property, and testifies to the facts of the foreclosure by the Bank's predecessor. The trustee has filed copies of the loan documents as exhibits.

The trustee has also submitted a declaration of an employee of the company that ran the motel during a portion of the period when the debtor claims his items of personal property went missing. The employee testifies to the disposition of some of the items and to communications with the debtor during that time period. The trustee has filed as exhibits copies of the written communications, along with copies of the debtor's original and amended Schedules B in an earlier bankruptcy case, on which the debtor failed to disclose any of the items of personal property he alleges were converted. The trustee has also filed copies of the state court's notice of ruling on the demurrer and motion to strike and the debtor's corrected third amended complaint, copies of interrogatories propounded in one of the consolidated cases and the debtor's answers, and a copy of the trustee's settlement agreement with the Motel Property Owner Defendants.

Finally, the trustee has analyzed his transaction with the Motel Property Owner Defendants as a compromise in light of the Woodson factors – the probability of success in the litigation; the collectibility of any judgment; the complexity, expense, inconvenience, and delay involved in pursuing the litigation; and the paramount interest of the creditors. See In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court agrees with the trustee's analysis. First, the compromise will net the estate $5,000 without the costs, risks, and delays associated with litigation. Second, the debtor did not disclose any of the items of personal property he claims were converted on either of two Schedules B filed in his earlier bankruptcy case, which, arguably, supports a conclusion that the claims have little or no value. Third, the trustee "believes proceeding to trial in this matter would be extremely risky and would likely result in a defense verdict given the need for cooperation by the Debtor and the very limited value, if any, of the single cause of action for conversion as against the Motel Property Owner Defendants." Trustee's Motion, filed May 13, 2015, at 21:7-10. The court agrees that, in these circumstances, the compromise is fair and equitable and in the best interest of creditors and the estate.

The debtor's opposition to the motion is problematic because it was signed and filed by an attorney, Wiley Ramey, who had substituted out of this case as the

debtor's attorney, was not the debtor's attorney of record, and thus, at the time he signed and filed the opposition, had no authority to participate in this case. See LBR 2017-1(b)(1). However, the debtor and Mr. Ramey have now signed and filed a substitution of attorneys under which Mr. Ramey has substituted back into the case as the debtor's attorney of record for all purposes. For this reason and for the sake of a complete record, the court will consider the opposition. The opposition centers on the debtor's testimony that he retained attorney Scott Sagaria (his attorney of record at the time the opposition was filed) to represent him in this case regarding certain itemized matters.[2] The debtor also testifies that, despite hundreds of attempts to reach him, Mr. Sagaria has "failed and refused to represent [the debtor] in connection with any of the matters for which he was paid in excess of $9,300.00." Debtor's Decl., attached as page 5 of Debtor's Opp., filed May 26, 2015, at 5:16-17. The debtor claims Mr. Sagaria "on paper at least, [] would be able to prevent [the debtor] from overbidding since he is continuing to hold the fees he was paid for which he did not perform." Id. at 6:1-3. The debtor says he "[is] going to need some assistance from the Court ordering Mr. Sagaria to explain himself, to disgorge fees paid to him, and for an Order continuing this hearing until he has done that." Id. at 6:5-7.

Finally, the debtor testifies at some length about his list of items allegedly missing from the motel property and about their disappearance, and offers the legal conclusion that "none of these properties were security or collateral pursuant to any Trust Deed." Id. at 7:9-10. He concludes: "No one can yet explain how the Defendant Receiver and the Defendants subject to this Motion can get away with stealing page after page of personal property. No Court has ever ruled that they can. In fact, the Superior Court has ruled twice relating to these claims; first overruling the Demurrer of Defendant Mission Asset Management Inc. . . . and secondly, in authorizing the filing of the action against the receiver." Id. 7:23-8:3.

The court has read the state court's rulings the debtor refers to, which he has submitted as exhibits. Neither contains any findings or conclusions that the debtor's claims are valid. In the first, the court struck the debtor's claim for punitive damages and sustained the defendants' demurrer as to all causes of action except the one for conversion. As to that claim, the court found that the complaint alleged sufficient facts to state a valid conversion cause of action. This was merely a finding as to the sufficiency of the pleadings; it did not constitute a factual finding as to the validity of the claim. In the second, the court merely authorized the debtor to sue the receiver, a prerequisite under state law. The court made clear it was making no findings as to the viability of the debtor's claims against the receiver.

The debtor's complaints about Mr. Sagaria and the retainer the debtor paid him have no relevance to this motion. The motion was properly brought and noticed, and for the reasons set forth herein, the court intends to grant the motion and to entertain overbidding, if any, at the hearing. As for the debtor's argument that the defendants "[stole] page after page of personal property," the important points here are that the debtor's claims against the Motel Property Owner Defendants are property of the bankruptcy estate, subject to administration by the trustee; that the court's role here is only to "canvass the issues" (see Burton v. Ulrich (In re Schmitt), 215 B.R. 417, 423 (9th Cir. BAP 1997)), not to determine the merits of the factual or legal issues (id.); that the paramount interest to be considered in

determining whether the compromise is fair and equitable is the interest of the creditors; and that the court is to apply "a proper deference to their reasonable views" on the matter. Woodson, 839 F.2d at 620, quoting In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). No creditor has weighed in on this motion; however, for the reasons posited by the trustee, the court is persuaded the compromise is in the best interest of the creditors and that it is fair and equitable.

The court will hear the matter and entertain overbidding.

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1 The debtor's claims are based on his allegation that the defendants in the Lead Case converted certain items of personal property belonging to him at a motel he owned in Cambria, California.

2 The court's local rules do not authorize the employment of an attorney for only certain purposes in the case; instead, "[a]n attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case . . . ." LBR 2017-1(a)(1).

32.	15-22171-D-7	MONIQUE JACKSON	MOTION TO RECONSIDER ORDER DENYING THE DEBTOR'S APPLICATION FOR WAIVER 6-17-15 [27]
33.	15-21876-D-7 BIN-1 MANUEL MEDINA VS.	LILLIAN PENTON	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-22-15 [23]

34.	15-24887-D-13	SUNNY TAING	MOTION FOR EXEMPTION FROM CREDIT COUNSELING, MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE 6-17-15 [9]
35.	15-23888-D-9 AM-5	COMMUNITY FACILITIES DISTRICT NO. 1990-1	MOTION FOR ORDER: (1) FIXING AUGUST 24, 2015 AS BAR DATE FOR ALL CLAIMS; (2) APPPROVING FORM OF NOTICE OF BAR DATE; (3) AUTHORIZING THE FISCAL AGENT TO PREPARE AND FILE THE PROOF OF CLAIM ON BEHALF OF THE HOLDERS OF THE BONDS, ET AL. 6-26-15 [64]
36.	13-23672-D-7 PA-1	ANDREW/JANET WEAVER	MOTION FOR ISSUANCE OF ORDER TO DEEM LETTER FROM JAMES WEAVER TO THE COURT A COMPLAINT 6-17-15 [23]

Final ruling:

The hearing on this motion is continued to July 29, 2015 at 10:00 a.m. No appearance is necessary on July 15, 2015.