UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 29, 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. 14-29306-D-7 JOHN CHAPMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 6-18-15 [17]

WELLS FARGO 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. The debtor received his discharge on December 22, 2014 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor 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.

2. 15-20106-D-12 TOMMY/LINDA THOMAS
BLG-1

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
4-1-15 [18]

3. 14-26408-D-7 MARK GILROY
PA-3

Final ruling:

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MARK J. GILROY AND/OR MOTION TO DISMISS ADVERSARY PROCEEDING
7-1-15 [69]

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

4. 14-25816-D-11 DEEPAL WANNAKUWATTE
DNL-14

CONTINUED MOTION TO ABANDON
5-21-15 [425]

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

5. 14-25816-D-11 DEEPAL WANNAKUWATTE
DNL-15

CONTINUED MOTION TO ABANDON
5-21-15 [430]

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

6. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-16 5-21-15 [435]

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

7. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-17 5-21-15 [440]

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

8. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-18 5-21-15 [445]

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

9. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-19 5-21-15 [450]

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

10. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-20 5-21-15 [455]

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

11. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-21 5-21-15 [475]

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

12. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-22 5-21-15 [480]

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

13. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-23 5-21-15 [485]

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

14. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-24 5-21-15 [460]

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

15. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-25 5-21-15 [465]

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

16. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-26 5-21-15 [470]

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

17. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-27 5-21-15 [490]

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

18. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-28 5-21-15 [495]

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

19. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-29 5-21-15 [500]

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

20. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-30 5-21-15 [505]

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

21. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-31 5-21-15 [510]

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

22. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-32 5-21-15 [515]

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

23. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-33 5-21-15 [520]

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

24. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-34 5-21-15 [525]

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

25. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-35 5-21-15 [530]

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

26. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-36 5-21-15 [535]

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

27. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-37 5-21-15 [540]

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

28. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-38 5-21-15 [545]

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

29. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-39 5-21-15 [550]

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

30. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-40 5-21-15 [555]

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

31. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-41 5-21-15 [560]

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

32. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-42 5-21-15 [565]

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

33. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-43 5-21-15 [570]

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

34. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-44 5-21-15 [575]

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

35. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-45 5-21-15 [580]

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

36. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-46 5-21-15 [585]

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

37. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-47 5-21-15 [590]

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

38. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-48 5-21-15 [595]

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

39. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-49 5-21-15 [600]

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

40. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-50 5-21-15 [605]

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

41. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-51 5-21-15 [610]

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

42. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-52 5-21-15 [615]

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

43. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-53 5-21-15 [620]

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

44. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-54 5-21-15 [625]

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

45. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-55 5-21-15 [630]

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

46. 15-21617-D-7 TIM/CARISSA ALDRICH OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
DNL-2
6-12-15 [54]

Tentative ruling:

This is the trustee's objection to the debtors' claim of exemption in a 2013 Mercedes C250. The debtors have filed opposition.[1] For the following reasons, the court will continue the hearing to allow the debtors to supplement the record and the trustee to file a reply.

The debtors have claimed a $5,100 interest in the vehicle as exempt under Cal. Code Civ. Proc. § 703.140(b)(2) and another $16,302 interest as exempt under Cal. Code Civ. Proc. § 703.140(b)(5), for a total interest of $21,402 claimed as exempt. The trustee posits two grounds on which to disallow the claim of exemption. First, he contends he has "superior interests in the Mercedes pursuant to his avoidance powers within the meaning of 11 U.S.C. Section 522(g)(1)." Trustee's Obj., filed June 12, 2015, at 3:27-28. Second, the trustee claims the debtors are not entitled to an exemption in the vehicle because they procured their interest through fraud.

The debtors cite Fed. R. Bankr. P. 4003(c) for the proposition that the trustee has the burden of proof; they assert the trustee has failed to meet that burden. In the debtors' view, "[a] claimed exemption is presumptively valid. The Chapter 7 trustee must show by a preponderance of evidence that the exemption should be denied." Debtors' Opp., filed July 15, 2015, at 2:7-8, citing Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 632-33 (9th Cir. BAP 2010).

The court disagrees. Two other departments of this court have recently held that for exemptions claimed under California exemption law, as was the debtors' claim of exemption in the vehicle, the burden of proof is on the debtor. See In re Tallerico, 2015 Bankr. LEXIS 2179,*11, *30-*31 (Bankr. E.D. Cal. June 30, 2015); In re Pashenee, 531 B.R. 834, —, 2015 Bankr. LEXIS 1897, *7-*8 (Bankr. E.D. Cal. June 8, 2015); see also In re Barnes, 275 B.R. 889, 899, n.2 (Bankr. E.D. Cal. 2002); cf. Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (9th Cir. BAP 2010); In re Gomez, 530 B.R. 751, 754 (Bankr. E.D. Cal. May 5, 2015); In re Dunnaway, 466 B.R. 515, 520 (Bankr. E.D. Cal. 2012). Further, although § 522(l) creates what has been referred to as "a form of presumption in favor of claimed exemptions" (Tallerico, 2015 Bankr. LEXIS 2179, at *15), that presumption is rebutted by nothing more than the mere filing of an objection to exemption. Id. at *15-*16.[2] Section 522(l) is also viewed as creating a burden of production, which, however, is satisfied by the mere filing of an objection to exemption, which, in turn, shifts the burden of production to the debtor. Tallerico, 2015 Bankr. LEXIS 2179, at *35-36;[3] see also Pashenee, 2015 Bankr. LEXIS 1897, at *13.

Here, the trustee's objection alone was sufficient to rebut the presumption that the debtors' claim of exemption is valid, and therefore, sufficient to shift the burden of production to the debtors, who have the burden of proof. The court will afford the debtors an opportunity to supplement the record and the trustee an opportunity to file a reply. The debtors asserted in their opposition that an evidentiary hearing may be necessary. They did not, however, state that they did not consent to the resolution of disputed material factual issues on declarations and did not file a separate statement of disputed material factual issues, as required by LBR 9014-1(f)(1)(B). Thus, unless the court on its own determines that an evidentiary hearing is necessary, the matter will be decided pursuant to Fed. R.

Civ. P. 43(c), made applicable herein by Fed. R. Bankr. P. 9017.

The court will hear the matter.

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1 The debtors, allegedly as debtors "In Pro Se," filed an "answer" to the objection on July 2, 2015, although they were at that time, and are, represented by counsel of record. The debtors' counsel, whose motion to withdraw as their counsel is also on this calendar, filed an opposition on the debtors' behalf on July 15, 2015 to preserve their rights pending the hearing on his motion to withdraw. Because the "answer" was signed and filed by the debtors themselves at a time when they were represented by counsel, and thus, were not entitled to appear on their own behalf, the answer will not be considered. The opposition filed by the debtors' counsel was timely filed and will be considered.

2

> From an evidentiary standpoint, § 522(l) operates as a rebuttable presumption that property claimed as exempt is exempt.
>
> The presumption is invoked by making the claim of exemption by the debtor on Schedule C or thereafter by a dependent of the debtor. Fed. R. Bankr. P. 4003(a).
>
> The presumption is rebutted by filing an objection to the claim of exemption. Fed. R. Bankr. P. 4003(b).

Id. at *15-*16.

3 36.

> The effect of § 522(l) is that property claimed as exempt will be exempt unless a party in interest objects.
>
> What § 522(l) creates is a form of a burden of production. That is, a party in interest has the burden to produce an objection. A filed objection operates to overcome the § 522(l) exemption-by-default.

Id. at *35. "Once the objector has satisfied its burden of production to produce an objection sufficient to overcome the presumption embodied in the § 522(l) exemption-by-default provision, the burden of production shifts to the party who has the burden of proof." Id. at *

47. 15-21617-D-7 JMC-1 — TIM/CARISSA ALDRICH — MOTION BY JOSEPH M. CANNING TO WITHDRAW AS ATTORNEY 6-30-15 [61]

Tentative ruling:

This is the motion of Joseph M. Canning ("Counsel") to withdraw as counsel for the debtors in this case. The motion was brought pursuant to LBR 9014-1(f)(1), and no party-in-interest has filed opposition. However, the court is not prepared to consider the motion at this time for the following reasons. First, Counsel's supporting declaration does not state the current or last known address of the debtors and does not state the efforts made to notify the debtors of the motion to

withdraw, both as required by LBR 2017-1(e). Second, the proof of service does not adequately state the manner of service. The proof of service states that the declarant mailed the documents listed from Suisun, California, that she "served the documents by enclosing them in an envelope," and that "[t]he envelope was addressed and mailed as follows: [names and addresses]." The proof of service does not state that the envelopes were mailed with postage prepaid.

In the event the debtors appear at the hearing, the court will consider the matter, and in the event the motion is granted, Counsel will be required to include in the order the current or last known address of the debtors and to serve the order, once entered, on all parties-in-interest. If the debtors do not appear, the court will continue the hearing to allow Counsel to supplement the record and to file and serve a notice of continued hearing and to properly demonstrate service thereof.

The court will hear the matter.

48. 13-28020-D-7 ROGER/BONNIE TURNER — MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)
HSM-10 — 6-30-15 [117]

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. Moving party is to submit an appropriate order. No appearance is necessary.

49. 14-22526-D-7 DAVID JONES — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
PA-1 — 6-1-15 [130]

CONTINUED NOTICE OF HEARING
8/26/15 AT 10:00 A.M.

Final ruling:

This matter is continued to August 26, 2015 at 10:00 a.m., per the moving party's notice of continued hearing. No appearance is necessary on July 29, 2015.

50. 13-29030-D-7 WILLIAM/JANET CHENG — CONTINUED MOTION TO RELEASE FUNDS FROM COURT REGISTRY
HCS-8 — 6-17-15 [837]

Tentative ruling:

This is the trustee's motion for an order directing the Clerk of the Court to release to the trustee $200,000 of the unclaimed funds being held in the court's registry in connection with this case. The hearing was continued for the trustee to file a supplemental brief, which he has done; the debtors have filed opposition both to the motion as originally filed and to the supplemental brief. For the following reasons, the motion will be denied.

The funds held in the registry in this case derive entirely from surplus funds; that is, funds remaining after all allowed claims against the estate were paid in full. Pursuant to § 726(a)(6) of the Bankruptcy Code, the funds in the registry, which were previously property of the bankruptcy estate, were to be distributed to the debtors. After the debtors failed to negotiate the check representing the surplus funds, the trustee deposited the funds into the court registry. Neither the debtors' failure to cash the check nor the trustee's deposit of the funds into the registry changed the character of the funds from a distribution of excess funds back into property of the estate.

The legal authority originally cited by the trustee is off the mark as it does not support the proposition that excess funds remain property of the estate after they have been distributed to the debtors or after the debtors have not negotiated the distribution check.[1] In this case, the deposit of the funds into the registry was a substitute for a distribution to the debtors, who for some reason did not negotiate the distribution check. The funds have retained their character as a distribution of excess funds; they are not estate funds. What the trustee is seeking appears to be in the nature of a surcharge of funds belonging to the debtors; he has provided no authority to support such relief.

In his supplemental brief, the trustee states he has located no legal support for "for the Court's assertion that the Trustee's distribution of the surplus funds changed the character of that asset from property of the estate into property that was no longer property of the estate." Trustee's Supp. Brief, filed July 13, 2015, at 16-17. The trustee cites, however, § 554 and case law interpreting it for his conclusion that "the only way to change the character of property of the estate into property that is not property of the estate is by abandonment of the property in accordance with 11 U.S.C. Section 554 or the closing of the case." Id. at 2:19-21.

The cases the trustee cites are inapposite. First, in Behrens v. Woodhaven Association, 87 B.R. 971 (Bankr. N.D. Ill. 1988), the court stated that "[a]bandonment requires either a court order after a notice and a hearing or a failure to administer scheduled assets and a closing of the case." 87 B.R. at 974, n.1 (citations omitted). The point of that remark (in dicta) and the holding of the other two cases the trustee cites was that a trustee's filing of a no-asset report does not effectuate abandonment. Id.; see also In re Reed, 940 F.2d 1317, 1321 (9th Cir. 1991) [a no-asset report "in and of itself cannot result in abandonment unless the court closes the case."]; In re Dlugopolski, 67 B.R. 122, 124 (Bankr. D. Kan. 1986) [property is not deemed abandoned under § 554(c) until the case is closed, notwithstanding the trustee's earlier issuance of a no-asset report.].

The trustee tries to equate his distribution of the surplus funds to the filing of a no-asset report, contending that both signify a trustee's intent not to administer assets but neither operates as an abandonment, and therefore, neither changes the character of the assets as property of the estate. First, however, a distribution of surplus funds is quite a different thing from the filing of a no-asset report. A distribution of surplus funds deals with the proceeds of assets that have already been administered; it does not signify a trustee's intent not to administer assets. Second, and importantly, abandonment of assets is not the only way assets can lose their character as property of the estate. The trustee contends "the only way to change the character of property of the estate into property that is not property of the estate is by abandonment." If that proposition were accurate, the funds the trustee has distributed to creditors in this case, including funds distributed to secured creditors out of the escrow on the sale of real property, and the funds he has distributed to his attorneys and to himself would also still be property of the estate, subject to the trustee reeling it back in just as he seeks to do with the funds he attempted to distribute to the debtors and then distributed into the court's registry on their behalf.

In similar fashion, the trustee refers several times to "defending the estate" and "protecting the estate." However, once the remaining funds of an estate are distributed, there is no bankruptcy estate left to defend or protect. The trustee's final report in this case stated that the estate had been fully administered; that fact has not changed simply because for some reason the debtors did not cash their distribution check.

Finally, whether the funds are property of the estate or not, the matter is governed by Bankruptcy Code § 347(a), which appears to foreclose the trustee's motion. That section provides that 90 days after the trustee's final distribution in a chapter 7 case, the trustee shall stop payment on any check remaining unpaid, "and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28." § 347(a). As relevant to funds paid into a federal court in a pending or concluded case, Chapter 129 includes 28 U.S.C. §§ 2041 and 2042. The former provides:

> All moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.
>
> This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

28 U.S.C. § 2041. The latter provides:

> No money deposited under section 2041 of this title shall be withdrawn except by order of court.
>
> In every case in which the right to withdraw money deposited in the court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the

right thereto, obtain an order directing payment to him.

28 U.S.C. § 2042.

None of these statutes permits a trustee to reel back into an "estate" monies he has distributed that have gone unclaimed for 90 days. Indeed, Bankruptcy Code § 347(a) indicates those monies shall be disposed of under chapter 129 of title 28, and the statutes in that chapter that pertain to funds paid into a federal court in pending or concluded cases, §§ 2041 and 2042, provide for the delivery of such monies "to the rightful owners" (§ 2041) and to those who can provide "full proof of the right thereto" (§ 2042). Another department of this court has held:

> The bankruptcy court has a duty to make sure that unclaimed funds are paid to the proper party. When a claimant submits an application for payment of unclaimed funds on account of a secured claim, the court must make a determination that the claimant is not only the proper party to make the claim, but that the claimant is also entitled to the funds. The burden of proving an entity's entitlement to unclaimed funds rests with the applicant.

In re Pena, 456 B.R. 451, 453 (Bankr. E.D. Cal. 2011). Here, the trustee has not even alleged, let alone demonstrated, he is the "rightful owner" of the funds he seeks to retrieve from the court's registry, and the court cannot envision a scenario that would allow him to do so.

The debtors have filed opposition, both to the motion as originally filed and to the trustee's supplemental brief. First, they raise issues of service that are inapposite as they have had ample opportunity to file opposition. They raise other issues they have raised many times before in this case, except that they have added charges of money laundering, obstructing justice, and bribery. Neither the issues raised before nor these new charges add anything to the analysis of this motion. Finally, the debtors contend this court has been divested of jurisdiction to consider this motion because of their pending appeal. Thus, they ask the court to vacate the July 29, 2015 hearing date.

"The timely filing of a notice of appeal to either a district court or bankruptcy appellate panel will typically divest a bankruptcy court of jurisdiction over those aspects of the case involved in the appeal." Sherman v. SEC (In re Sherman), 491 F.3d 948, 967 (9th Cir. 2007) (citation omitted). The only matter over which the bankruptcy court will lack jurisdiction is "the very order being appealed." Id. The court is aware of the debtors' pending appeal, which was commenced three months before this motion was filed; the issue of whether the trustee is entitled to the release of a portion of the funds in the court's registry is not implicated in the appeal. Thus, the appeal does not divest this court of jurisdiction to determine that issue. For the reasons stated above, the court finds it does not have the authority to grant that relief.

In his supplemental brief, the trustee requests that, in the alternative, the court discharge him as trustee in the case. He cites the final report he filed on March 9, 2015, in which he stated that the case had been fully administered and requested that he be discharged from further duties as trustee in the case. The court thereafter denied the debtors' motion by which they objected to the final report, but did not grant or deny the trustee's request to be discharged. The trustee cites Fed. R. Bankr. P. 5009(a), which provides that if a chapter 7 trustee has filed a final report and account "and has certified that the estate has been

fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered." Because the court has overruled the debtors' objections to the final report, the trustee contends there is a presumption that the estate has been fully administered; thus, the court should discharge the trustee so that "his counsel's services would end." Supp. Brief, at 5:11. He contends this relief would be consistent with the court's finding that there is no estate left to defend or protect.

The debtors, for their part, "request the court not to discharge trustee Richards for his criminal acts." Debtors' Opp., filed July 17, 2015, DN 863, at 3:25-26. The court does not understand an order discharging a trustee as trustee in a particular case to operate as a discharge of liability for actions previously taken. Accordingly, as the case has been fully administered the court is inclined to discharge the trustee.

Finally, the court has been made aware of the debtors' request, filed June 29, 2015, DN 852, that the Clerk of the court release to them the $412,993.76 in funds previously deposited into the court's registry by the trustee as the debtors' surplus. The debtors will need to comply with all the requirements set forth in the applicable local rule, LBR 7067-1(e).

The court will hear the matter.

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1 The authority cited by the trustee at the time he filed the motion was limited to (1) statutes providing for the deposit of monies paid into a federal court and for the withdrawal of such monies only on court order, 28 U.S.C. §§ 2041 and 2042 (see below); (2) this court's former guidelines, now LBR 7067-1, governing the release of registry funds; (3) Bankruptcy Code § 726(a), setting forth the order in which funds of a chapter 7 estate are to be distributed; and (4) Bankruptcy Code § 507, concerning administrative expenses, including those of the trustee and his professionals.

51. 15-24934-D-7 KELLY PETERSON — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
6-18-15 [5]

52. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION FOR SUMMARY JUDGMENT
12-2312 HLC-1 — 7-1-15 [183]
BURKART V. BISESSAR

Final ruling:

The hearing on this motion is continued to August 12, 2015 at 10:00 a.m. No appearance is necessary.

53. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2317 HLC-1 7-1-15 [112]
BURKART V. PRATAP

Final ruling:

The hearing on this motion is continued to August 12, 2015 at 10:00 a.m. No appearance is necessary.

54. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2359 HLC-1 7-1-15 [118]
BURKART V. MAHARAJ

Final ruling:

The hearing on this motion is continued to August 12, 2015 at 10:00 a.m. No appearance is necessary.

55. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2368 HLC-1 7-1-15 [160]
BURKART V. PRASAD

Final ruling:

The hearing on this motion is continued to August 12, 2015 at 10:00 a.m. No appearance is necessary.

56. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2396 HLC-1 7-1-15 [121]
BURKART V. PRASAD ET AL

Final ruling:

The hearing on this motion is continued to August 12, 2015 at 10:00 a.m. No appearance is necessary.

57. 10-47553-D-7 EAS-2 — CHARLES PROTTEAU — MOTION TO AVOID LIEN OF ARCADIA, INC. 6-22-15 [29]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Arcadia, Inc. (the "Creditor"). The motion will be denied because the moving party 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 party served the Creditor to the attention of its CEO, which was appropriate under Rule 7004(b)(3), but service was made by certified mail whereas under the rule, service on a corporation that is not an FDIC-insured institution must be by first-class mail, not certified mail. See preamble to Fed. R. Bankr. P. 7004(b).

The moving party also served the Creditor through the attorney who obtained the Creditor's abstract of judgment whereas there is no evidence the attorney 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).

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

58. 10-47553-D-7 EAS-3 — CHARLES PROTTEAU — MOTION TO AVOID LIEN OF MICHAEL P. ALLEN GENERAL CONTRACTORS, INC. 6-22-15 [35]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Michael P. Allen General Contractors, Inc. (the "Creditor"). The motion will be denied because the moving party 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 party served the Creditor to the attention of its CEO, which was appropriate under Rule 7004(b)(3), but service was made by certified mail whereas under the rule, service on a corporation that is not an FDIC-insured institution must be by first-class mail, not certified mail. See preamble to Fed. R. Bankr. P. 7004(b).

The moving party also served the Creditor through the attorney who obtained the Creditor's abstract of judgment whereas there is no evidence the attorney 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).

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

59. 10-47553-D-7 EAS-4 — CHARLES PROTTEAU — MOTION TO AVOID LIEN OF L.A. COMMERCIAL GROUP, INC. 6-22-15 [41]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by L.A. Commercial Group, Inc. (the "Creditor"). The motion will be denied because the moving party 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 party served the Creditor to the attention of its CEO, which was appropriate under Rule 7004(b)(3), but service was made by certified mail whereas under the rule, service on a corporation that is not an FDIC-insured institution must be by first-class mail, not certified mail. See preamble to Fed. R. Bankr. P. 7004(b).

The moving party also served the Creditor through the attorney who obtained the Creditor's abstract of judgment whereas there is no evidence the attorney 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).

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

60. 10-47553-D-7 EAS-5 — CHARLES PROTTEAU — MOTION TO AVOID LIEN OF FIDELITY RECOVERY SERVICE 6-22-15 [47]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Fidelity Recovery Service (the "Creditor"). The motion will be denied because the moving party 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 party served the Creditor to the attention of its CEO, which was appropriate under Rule 7004(b)(3), but service was made by certified mail whereas under the rule, service on a corporation or other unincorporated association that is not an FDIC-insured institution must be by first-class mail, not certified mail. See preamble to Fed. R. Bankr. P. 7004(b).

The moving party also served the Creditor through the attorney who obtained the Creditor's abstract of judgment whereas there is no evidence the attorney 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).

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

61. 09-29162-D-11 SK FOODS, L.P.
14-2220 IAN-1
WESTLAND INSURANCE COMPANY V. SHARP ET AL

MOTION TO APPROVE ENTRY OF JUDGMENT FROM ENTRY OF DEFAULT AND MOTION TO APPROVE STIPULATION
6-29-15 [61]

62. 11-47176-D-7 NICK/KIMBERLY DUGGINS
DNL-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF ROBERT L. MEISSNER SPECIAL COUNSEL
7-1-15 [56]

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. Moving party is to submit an appropriate order. No appearance is necessary.

63. 15-21876-D-7 LILLIAN PENTON
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-15 [31]

64. 14-26078-D-7 LUISITA SONGCO
TLW-3

MOTION BY TRACY L. WOOD TO WITHDRAW AS ATTORNEY
6-23-15 [92]

65.	13-34980-D-7 MHK-3	MICHELO/MYLA SANTIAGO	MOTION TO SELL 6-23-15 [36]

66.	15-23286-D-7 NBC-1	TOBY GARMAN AND ANGELA JOHNSON-GARMAN	MOTION TO AVOID LIEN OF PACIFIC SERVICE CREDIT UNION 6-11-15 [11]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Butte County Credit Bureau, a corporation (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 (1) at a street address, with no attention line; (2) at a post office box address, with no attention line; and (3) through the attorneys who obtained the Creditor's abstract of judgment. The first and second methods were insufficient because the rule requires that a corporation be served to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line.

The third method 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, whereas there is no evidence the attorneys who obtained the abstract of judgment are 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).

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

67.	15-24691-D-7	SHARIQ KHAN	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 6-10-15 [5]

68. 12-32294-D-7 JOWARA/YOLANDA MORGANDE — CONTINUED OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
SLC-1 — 2-25-15 [40]

Tentative ruling:

This is the trustee's objection to the debtors' claim of exemption of $120,000 in value in a personal injury claim that is the subject of an arbitration proceeding entitled Yolanda Knope v. Cache Creek Casino Resort, JAMS Arbitration No. 1130005171. The debtors have filed opposition. For the following reasons, the objection will be overruled.

The trustee originally objected to the claim of exemption on two grounds. The first was resolved in the debtors' favor by the court's ruling following the initial hearing. The parties have now supplemented the record and briefed the issue of whether the proceeds of the personal injury claim are necessary for the debtors' support and that of their dependents, as required by Cal. Code Civ. Proc. § 704.140(b). First, the court agrees with the trustee that the burden of proof is on the debtors. See In re Tallerico, 2015 Bankr. LEXIS 2179,*11, *30-*31 (Bankr. E.D. Cal. June 30, 2015); In re Pashenee, 531 B.R. 834, —, 2015 Bankr. LEXIS 1897, *7-*8 (Bankr. E.D. Cal. June 8, 2015); see also In re Barnes, 275 B.R. 889, 899, n.2 (Bankr. E.D. Cal. 2002).

The court disagrees, however, with the trustee's position that the funds are not necessary for the debtors' support and that of their dependents. The debtors' income is substantially higher than it was when this case was filed three years ago. At that time, their only income was $1,632 per month in SSDI and $344 per month from Mrs. Morgande's work as a caregiver, for a total of $1,976. The debtors indicated they had one dependent at that time, a 17-year old daughter. Their rent payment was $1,150 and their other scheduled household expenses were meager. Even so, their monthly net income was listed at a negative $408 per month. In contrast, Mr. Morgande now receives VA benefits of $3,069 per month and social security income of $1,594 per month, and Mrs. Morgande receives what the debtors describe as temporary assistance from the Wounded Warriors Veterans Affairs Caregiver Program in the amount of $2,000 per month. Thus, their total income is $6,663 per month.

Mrs. Morgande testifies they do not know how long the Caregiver Program assistance will last. The debtors' attorney has filed a response in which he states that the assistance is from the Wounded Warrior Project, Inc., and is in the nature of charity that the debtors "cannot rely on . . . whatsoever." Debtors' Response, filed July 14, 2015, at 2:11. This is not evidence, and the debtors' position would have been strengthened if they had submitted testimony to that effect. Nonetheless, the court has no reason to believe this assistance will be permanent, and the court accepts Mrs. Morgande's testimony that they do not know how long it will last.

The debtors claim they have virtually no prospects for present or future employment. Mrs. Morgande testifies her husband is permanently and totally disabled. She states she worked as a certified nursing assistant and unit clerk for 15 years prior to the accident that gave rise to the personal injury claim and has also been employed as a warehouse worker; that her injuries from the accident left her physically unable to work in either position; and that she has no job experience or training except working in a hospital and a warehouse.

Although the debtors' income is significantly higher than at the outset of the case, they show their household expenses, except their rent, as substantially higher

as well. The court is mindful, however, that the expenses they listed on their original schedules were extremely modest. Mrs. Morgande testifies their 30-year old son suffers from post-traumatic stress disorder, severe neck and back impairment, and brain injuries resulting in seizures, all as a result of his service in the military, yet he receives VA benefits of only $1,100 per month. Their son has 50% custody of his 7-year old son, whom the debtors consider, along with their son, a dependent of theirs because Mrs. Morgande provides at least half his care while he is with their son. The debtors had been residing with their son but have recently moved out of his apartment because of tensions between him and Mr. Morgande. The debtors have amended their Schedule J to list a $1,300 per month contribution to their son's household, which they can afford as a result of the Wounded Warrier VA Caregiver Program assistance.

With these changes, the debtors report monthly net income of $2 per month with the Caregiver Program assistance; without it, and without the $1,300 per month contribution to their son, their budget would be in the negative by about $700 per month, based on the figures on their latest schedules. These figures make a compelling and convincing case for the debtors' position that the $120,000 in personal injury proceeds are necessary for their support.

The trustee makes several arguments. She contends that the debtors' son and grandson are not legally their dependents; that Mrs. Morgande was working as a caregiver when this case was filed and is presently taking care of their son, and thus, has the ability to earn income; that their budget includes generous amounts for gas ($680), recreation ($200), and clothing and laundry ($200); and that their credit cards and a personal loan from their son either have been or will be paid off in the relatively near future. (By the court's calculation, at the rates shown on the debtors' Schedule J, the personal loan should have been paid off by now and the credit cards should be paid off in 17 months.) The trustee also questions how the debtors' son, with income of only $1,100 per month, could afford to make a $1,500 loan to them.

Whatever appeal these factors may have, it is overcome by an analysis of all the factors the court is to consider, including the debtors' "anticipated living expenses and income; the age and health of the debtor and his or her dependents; the debtor's ability to work and earn a living; the debtor's training, job skills and education; the debtor's other assets and their liquidity; the debtor's ability to save for retirement; and any special needs of the debtor and his or her dependents." In re Altmiller-Rubio, 2011 Bankr. LEXIS 5570, *14 (Bankr. E.D. Cal. 2011), quoting In re Moffat, 119 B.R. 201, 206 (9th Cir. BAP 1990). The court does not know Mrs. Morgande's age; Mr. Morgande, however, is old enough to receive social security. Neither is in very good health, and it is apparently all but certain Mr. Morgande will not be able to work again, although his current income – from VA benefits and social security – is apparently guaranteed for their lives. Although Mrs. Morgande can apparently work as a caregiver, she has not earned a substantial amount from that work, and her testimony is sufficient to show she is unlikely to earn substantial income from any other type of work.

The court agrees with the trustee that some of the debtors' expenses appear higher than necessary and that their personal loan and credit card repayments, a total of $950 per month, will be completed relatively soon. Deducting those payments and $120 per month for a storage unit the trustee contends is not reasonably necessary, the trustee posits the debtors will have $1,070 per month in excess income, such that they will not need the $120,000 from the personal injury claim. She also contends it is unfair for creditors to support and assist the

debtors' son. The court is not convinced the definition of "dependent" for tax purposes is mandated here. However, even if the court adds the $1,300 per month the debtors contribute to their son to the $1,070 in excess income they will have when the personal loan and credit cards are paid off (and assuming they can eliminate the storage unit expense), they would have monthly net income of $2,370, just $370 more than the $2,000 they are receiving from the Caregiver Program. The court finds it would not comport with the factors the court is to consider to disallow the debtors' exemption of the personal injury proceeds on the supposition that the Caregiver Program assistance will continue.

Finally, the court considers that the debtors have no assets of any significance. In light of that fact, and in light of their ages, health, and limited prospects for employment, the court concludes that a positive cash flow of $370 per month, or even $2,370 per month when $2,000 of that is speculative at best, is insufficient for their reasonable needs, and that even if certain of their other expenses were reduced, they would still have insufficient net income to meet those needs now and in the future. Thus, the court concludes that the debtors have satisfied their burden of proving that the personal injury funds are necessary for their support and that of their dependents.

The court will hear the matter.

69. 12-32294-D-7 SNM-2 — JOWARA/YOLANDA MORGANDE — CONTINUED MOTION TO COMPEL ABANDONMENT 1-28-15 [22]

Tentative ruling:

This is the debtors' motion to compel the trustee to abandon a personal injury claim that is the subject of an arbitration proceeding entitled Yolanda Knope v. Cache Creek Casino Resort, JAMS Arbitration No. 1130005171. The trustee has filed opposition. As the court intends to overrule the trustee's objection to the debtors' claim of exemption of the personal injury claim, the court will also grant this motion.

The court will hear the matter.

70. 15-22196-D-7 FF-1 — WILFORD/BARBARA PROSCH — CONTINUED MOTION TO COMPEL ABANDONMENT 5-11-15 [26]

Final ruling:

This motion has been resolved by order entered July 1, 2015. Matter removed from calendar.

71. 15-22297-D-7 JOHN/ANGELA CUSHMAN
KAZ-1

DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-25-15 [14]

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company's motion for relief from automatic stay. The court records indicate that 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.

72. 15-23698-D-7 KEVIN ADAMS
NLG-1
CENTRAL MORTGAGE COMPANY VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-17-15 [18]

73. 15-24298-D-7 CAROLYN SARENTE
CJO-1

GREEN TREE SERVICING, LLC
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-15 [11]

74. 13-21199-D-7 JAMES SCOTT
DNL-17

MOTION FOR ADMINISTRATIVE EXPENSES
6-26-15 [316]

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 approval of administrative tax claims/expenses is supported by the record. As such the court will grant the motion for approval of administrative tax claims/expenses. Moving party is to submit an appropriate order. No appearance is necessary.

75.	15-21617-D-7 DNL-3	TIM/CARISSA ALDRICH	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TRAVIS CREDIT UNION 7-8-15 [76]
76.	15-21617-D-7 DNL-4	TIM/CARISSA ALDRICH	MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES 7-8-15 [81]
77.	09-29162-D-11 14-2220 WESTLAND INSURANCE COMPANY V. SHARP ET AL	SK FOODS, L.P.	CONTINUED MOTION FOR ORDER AUTHORIZING DISCHARGE OF STAKEHOLDER WESTLAND INSURANCE COMPANY IN INTERPLEADER ACTION 2-11-15 [23]
78.	14-25820-D-11 DMC-17	INTERNATIONAL MANUFACTURING GROUP, INC.	MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIAMOND MCCARTHY FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL(S) 7-7-15 [744]

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

79. 15-23127-D-7 EDDIE BOHI
CJO-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-8-15 [13]

FRANKLIN AMERICAN MORTGAGE COMPANY VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor's Statement of Intentions indicates he intends 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.

80. 15-23231-D-7 DEAN ENGEL
JLZ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-15-15 [33]

NOELEEN O'BYRNE VS.

81. 13-23672-D-7 ANDREW/JANET WEAVER
PA-1

CONTINUED MOTION FOR ISSUANCE OF ORDER TO DEEM LETTER FROM JAMES WEAVER TO THE COURT A COMPLAINT
6-17-15 [23]

Tentative ruling:

This is the motion of James Weaver for an order deeming a letter he wrote to the court in June of 2013 an adversary complaint. The debtors have filed opposition and James has filed a reply. For the following reasons, the motion will be denied.

James is the brother of Andrew Weaver. Andrew and his wife Janet are the debtors in this chapter 7 case, which was filed on March 19, 2013.[1] James and Andrew's mother, Marilyn Weaver, was at that time apparently suffering from dementia and living in the memory care unit of a nursing home. The debtors scheduled Marilyn as a creditor, indicating they owed her $114,663 on account of a personal loan made in 2008. They did not schedule James as a creditor. James, however, found out about the bankruptcy case, and on May 28, 2013, wrote a letter to the judge to whom the case was assigned. The letter was received and filed by the Clerk's office on June 6, 2013, eight days before the deadline to file objections to discharge or dischargeability, June 14, 2013.

In the letter, James claimed he "[was] writing to protest a loan included in the subject bankruptcy case of Andrew and Janet Weaver." James' Ex. 7. He

explained in some detail the circumstances of money he alleged had been loaned by Marilyn to the debtors at a time when they had power of attorney over her affairs. He stated that the debtors simply made the loan to themselves; that there was a question as to whether Marilyn's signature on the loan document was valid; that it was unlikely Marilyn would loan any of her children $115,000 as she knew her health was deteriorating and that she would be living on a fixed income; that the loan was made at a time when she could no longer comprehend financial information; and that the situation had "put Marilyn in financial peril, as she is close to running out of money. . . . The repayment of this loan would pay Marilyn's deductables and co-payments for at least another five years and allow her to continue living in her current facility." Id. James concluded the letter as follows: "Based on the reasons listed above, I respectfully request that the loan made from Marilyn Weaver to Andrew and Janet Weaver be set aside from the personal bankruptcy." Id.

On May 16, 2013, twelve days before James wrote his letter, his aunt, Linda Reed, who was Marilyn's sister, had written a letter to the judge assigned to this case, in which she expressed similar concerns, concluding with the request that the judge "not allow the discharge of the loan to Marilyn Weaver in this bankruptcy, and instead uphold the loan and require full repayment in a timely manner." James' Ex. 3. On June 3, 2013, six days after James wrote his letter, his uncle, Glen Hendren, Ph.D., who was Marilyn's brother, also wrote the judge assigned to this case, expressing the same concerns and concluding, "I hope it is within your authority to disallow the discharge of this debt." James' Ex. 6.

Of the three letters, it appears only one made it to the judge in the case. On May 23, 2013, the judge signed an order on EDC Form 6-350 stating that Ms. Reed's letter appeared to be in the nature of a complaint to determine the dischargeability of a debt, to object to a discharge, and/or to obtain an injunction or other equitable relief. The order stated, "[t]his complaint will require the prosecution of an adversary proceeding," and advised that the required $293 filing fee had not been paid and that Ms. Reed's letter did not comply with formatting requirements of Fed. R. Bankr. P. 9004(b) and LBR 9004-1. The order directed Ms. Reed to, within 15 days, pay the filing fee, file an Adversary Proceeding Cover Sheet, and file an amended pleading conforming with the formatting requirements of the rules. The Clerk's office assigned Ms. Reed's letter an adversary proceeding number, and the order was filed May 24, 2013 in the adversary proceeding.

When Ms. Reed did not pay the filing fee, the court issued an order to show cause why her complaint should not be dismissed. In response, Ms. Reed again wrote to the judge, indicating that although her feelings about the situation had not changed, her health, distance, and finances prevented her from pursuing the matter. She requested a voluntary dismissal of the adversary proceeding, and the proceeding was dismissed. Neither James nor Dr. Hendren followed up on their own letters in any way. The debtors received a discharge on June 24, 2013 and the case was closed on July 26, 2013. Marilyn Weaver died on April 15, 2014. On May 27, 2014, James sued Andrew in the El Dorado County Superior Court, dismissing his complaint without prejudice a year later after three different attorneys for Andrew had written to James' attorney over a period of four months advising that the lawsuit was in violation of Andrew's bankruptcy discharge.

Now, two years after the debtors received their discharge, James seeks to have his letter deemed an adversary complaint. The crux of the motion is the theory that James' letter of two years ago was the equivalent of an adversary complaint and should be treated as such. James notes that the letter stated the bankruptcy case number and the debtors' names. He highlights what he calls the letter's "specific

and timely prayer that '[b]ased on the reasons listed above, I respectfully request that the loan made from Marilyn Weaver to Andrew and Janet Weaver be set aside from the personal bankruptcy'" (James' Motion, filed June 17, 2015 ("Mot."), at 12:28-13:2), which James characterizes as a request that the debt be determined to be nondischargeable. James also emphasizes that he included attachments with his letter that, in his view, set forth factual allegations sufficient to state a cause of action for nondischargeability. James believes his letter should have been treated, and therefore, should be treated now as Ms. Reed's letter was.

> Unfortunately, only one of the letters was deemed a complaint, assigned an adversary proceeding number, and otherwise treated as an adversary proceeding. There is no apparent reason why the other letters were not given equal and similar treatment. It is apparent, however, that the Court does have the discretion to treat James' letter of May 28, 2013 as a complaint and otherwise treat it as an adversary proceeding. This is evidenced by the fact that Mrs. Reed's letter was treated as a complaint initiating an adversary proceeding. The very actions of the Bankruptcy Court in this case, reflect its ability to grant the relief requested herein.

Mot. at 14:20-15:2.

The court does not agree that James' letter must or should be treated as Ms. Reed's letter was. It was not and is not incumbent on the court – either the clerk's office, the judge, or chambers staff – to review all documents filed with the court to determine their actual intent and to take action to remedy procedural problems to conform the procedure to the intent. The sheer volume of documents filed with the court would make that prohibitive. Further, it would unreasonably relieve creditors of the responsibility to inform themselves, as must anyone seeking to sue someone else in a state or other federal court, of the required procedures.

James cites Pfeiffer v. Rand, 144 B.R. 253, 256 (Bankr. S.D.N.Y. 1992), in which the court held that a creditor's letter to the judge constituted a complaint to determine dischargeability. This court does not disagree that a letter can be construed as a complaint; in fact, this court so construed Ms. Reed's letter. In Pfeiffer, however, the creditor, before the deadline for filing dischargeability complaints, sent a letter to the judge objecting to the discharge of her claim, and followed up, 11 days after the deadline, by filing a complaint and adversary proceeding cover sheet.

Here, James took no such action. Instead, he behaved more like the creditor in Schmidt v. Goscicki (In re Goscicki), 207 B.R. 893 (9th Cir. BAP 1997), who, two and one-half months before the deadline for dischargeability complaints, filed a notice of removal of his state court action against the debtor. The bankruptcy court remanded the case to the state court, and after entry of the debtor's discharge, the creditor continued to prosecute the state court action. The Panel rejected the creditor's later contention that the state court complaint, which was filed in the bankruptcy court as a part of the removal application and which contained fraud allegations, was a sufficient substitute for an adversary complaint. 207 B.R. at 897.

James' emphasis on the court's treatment of his aunt's letter is illogical and misplaced. There is no indication James knew about his aunt's letter, although it seems likely he and his aunt and uncle discussed the matter, since all three wrote letters. There is no indication James knew the court had treated his aunt's letter

as an adversary complaint. If he did know, he would also have known the court was requiring her to pay a filing fee and to file an amended complaint conforming to procedural requirements, yet he did not do either of those things in regard to his own letter. If he did not know his aunt's letter had been treated as an adversary complaint, there is no reason he should find it relevant to his argument now. In short, in the court's view, that someone in the clerk's office happened to read Ms. Reed's letter closely enough to decide it resembled a complaint to determine dischargeability was a fortunate occurrence; it was, and is, not something that entitles anyone else who writes a letter instead of filing a complaint to the same service.

Finally, assuming for the sake of argument only that James' letter should have been treated two years ago as his aunt's was treated, his subsequent two-year delay in pursuing his alleged rights (or those of his mother, as discussed below) is conclusively too long. There is a short and strict deadline for the filing of nondischargeability complaints, for reasons that have long since been detailed in case law. To permit someone who was aware of the bankruptcy case in time to file a complaint but who chose instead to write a letter to the judge to revive that letter as a complaint after taking no action for over two years would violate those principles.

James' remaining arguments are also unavailing. He complains that Andrew and Janet listed Marilyn as a creditor at her nursing home address, knowing full well she was incompetent at that time, and that they failed to list Marilyn's trust as a creditor. James cites Fed. R. Bankr. P. 1007(m), which provides: "If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2)." However, whereas this allegation may have been relevant in an adversary proceeding to determine discharge or dischargeability, it has nothing to do with whether James' letter should be construed two years later as an adversary complaint. Similarly, it is also irrelevant that the Notice of Chapter 7 Bankruptcy Case, the trustee's no-asset report, and the debtors' discharge were sent to Marilyn at the nursing home's address.

James emphasizes that the court's order treating Ms. Reed's letter as an adversary complaint included specific cautions: that she might wish to seek legal advice and that failure to comply with the order might result in dismissal of the adversary proceeding and termination of her rights against the debtors. Thus, he seems to suggest he was entitled to receive the same cautions in response to his letter. He also states it is important to understand that Ms. Reed's second letter to the court, the one in which she requested the voluntary dismissal of her adversary proceeding, was not served on anyone. Apparently, he is suggesting he was relying on Ms. Reed's adversary proceeding to protect his and/or Marilyn's interests, and thus, should have been made aware Ms. Reed was dismissing it so he could take further action himself. Both of these theories assign responsibilities to the court to provide advice and cautions to a creditor who has not followed proper procedure, responsibilities the court simply does not have.

Finally, James claims he is simply protecting his mother's rights by this motion. He complains that Andrew and Janet failed to have a guardian ad litem appointed for her by this court "for the purposes of asserting her rights" (Mot. at 14:16-17) and that their listing of Marilyn at the nursing home's address rather than through a trustee or representative of Marilyn "was designed to deprive a woman

who was in a most vulnerable state of her due process rights." James' Reply, filed July 8, 2015, at 8:3-5. James cites an email Janet wrote in April of 2010 in which she acknowledged that a power of attorney for Marilyn had been in place for several years and that "we [Andrew and Janet] have been helping Marilyn with everything for quite some time." James' Ex. 11. James contends that the debtors had apparently been in charge of Marilyn's affairs for several years by the time they filed this case, yet they did not disclose that fact to the court, but instead, failed in their duty to protect her.

> **If indeed the Debtors had power of attorney over Marilyn at the time the bankruptcy case was filed, or if the Debtors were the Trustees of her Trust at the time the bankruptcy case was filed, they had a huge conflict of interest. Yet they made no effort to make full and complete disclosure to this Court about the facts of this case and to have the Court appoint a representative or guardian to protect Marilyn from themselves. This type of behavior cannot be tolerated by this Court.**

James' Reply, filed July 8, 2015, at 8:24-9:2.

James offers his services as his mother's "next friend" and cites Fed. R. Civ. P. 17(c)(2), incorporated here by Fed. R. Bankr. P. 7017, which provides that an incompetent person who does not have a duly appointed representative may sue by a next friend or guardian ad litem and that the court must appoint a guardian ad litem or issue another appropriate order to protect an incompetent person who is unrepresented in an action. He concludes: "The Debtors should not be allowed to thwart the efforts of James Weaver to ensure that his mother is afforded justice. The truth is out there and it needs to be exposed to the light of day and to the equitable power of this Court." Reply, at 9:3-5. The argument fails. Marilyn Weaver is not an incompetent person in need of a next friend or guardian ad litem; she is deceased. In fact, there is no indication the funds remaining to her after her alleged loan to the debtors were insufficient to provide for her up until her death. The court has no reason to conclude the rights James seeks to vindicate are anything other than his own. However, either way, whether he is acting on his own or his mother's behalf, it is undisputed that James had knowledge of the bankruptcy case in time to file an adversary complaint, but failed to do so. His much belated effort to do so will be denied.

The court will hear the matter. The court finds that there is no factual dispute as to any matter material to this decision; thus, the debtors' request for an evidentiary hearing, joined in by James, is denied.

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1 The court refers to the parties by their first names for ease of reference only; no disrespect is intended.

82. 15-24881-D-7 JDM-1	AMY BORIBOUNE	MOTION FOR RELIEF FROM AUTOMATIC STAY
	TRAVIS CREDIT UNION VS.	7-8-15 [15]

83. 15-24488-D-7 FRANCES WILLIAMS
RHM-1

DEBTOR DISMISSED: 06/22/2015

MOTION TO VACATE DISMISSAL OF CASE
7-6-15 [18]

84. 15-20998-D-7 OSCAR ORTIZ
MDM-1

AMENDED MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
7-15-15 [23]