UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 26, 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.

1.	13-31701-D-7 SSA-3	SEUNG CHAN KWON AND JUNG EUN LEE	MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY 7-14-15 [46]

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.

2. 15-21617-D-7 TIM/CARISSA ALDRICH — CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
DNL-2 — 6-12-15 [54]

Tentative ruling:

This is the trustee's objection to the debtors' claims of exemption of a 2013 Mercedes C250 (the "vehicle"). The debtors have filed opposition and the trustee has filed a reply. In addition, both parties have filed declarations supplementing the record. For the following reasons, the objection will be sustained.

On their original Schedules B and D, filed with their petition on February 27, 2015, the debtors listed the vehicle as having a value of $21,402 and listed a debt owing to Travis Credit Union (the "credit union") in the amount of $27,125 as secured by a lien against the vehicle. They did not claim any interest in the vehicle as exempt, presumably because, based on their schedules, they had no equity in the vehicle. In their Statement of Financial Affairs, they disclosed a transfer of the vehicle, in September of 2014, as follows: "2013 Mercedes C250 (transfer was from Debtor W to Debtor H) for $26,000.00. Debtor H obtained loan from Travis Credit Union to fund purchase. Both the asset and obligation are listed on Schedule B and D respectively." Statement of Affairs, filed Feb. 27, 2015, answer to question 10. On May 13, 2015, the debtors filed an amended Schedule C on which they claim 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 claims 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 ("Obj.), 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 court finds the debtors are not entitled to the claims of exemption because of § 522(g); thus, the court need not reach the trustee's second argument.

The applicable statute provides:

> **Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if--**
>
> **(1)**
>
> **(A) such transfer was not a voluntary transfer of such property by the debtor; and**
>
> **(B) the debtor did not conceal such property; or**
>
> **(2) The debtor could have avoided such transfer under subsection (f)(1)(B) of this section.**

11 U.S.C. § 522(g).

The trustee claims he has recovered the vehicle under his avoidance powers and that the debtors' respective transfers of the vehicle – from joint debtor Carissa Aldrich to debtor Tim Aldrich and from Tim Aldrich to the credit union – were voluntary transfers by the debtors, with the result that the debtors are not

entitled to exempt the vehicle. The trustee alleges that before the filing of the petition commencing this case, Carissa,[1] who owned the vehicle free and clear of liens, borrowed $15,769 from California Check Cashing Stores, LLC, promising to secure repayment with a security interest in the vehicle, but then took steps to thwart the creditor's attempts to perfect its security interest; that Carissa later transferred title to the vehicle to Tim, who then borrowed $27,040 from the credit union, promising to secure repayment with a security interest in the vehicle; and that Tim then took steps to thwart the credit union's attempts to perfect its security interest. After this case was commenced, the credit union and Wheels Financial Group, LLC, dba 800LoanMart ("Loan Mart"), as assignee of California Check Cashing Stores, LLC, respectively, filed adversary complaints against Tim and Carissa, respectively, to determine the debtors' debts to them to be nondischargeable. The adversary proceedings are pending.

The trustee goes on to allege that in December of 2014, about two months before the debtors filed this case, North Bay Auto Auctions, on behalf of Loan Mart, repossessed the vehicle; that the debtors attempted to get it back but were unsuccessful; and that North Bay Auto Auctions later turned the vehicle over to the trustee "because, among other reasons, the Trustee asserted he would use his avoidance powers to avoid Loan Mart's claims." Obj. at 3:17-18. The court has since approved a compromise between the trustee and the credit union under which the vehicle will be sold by the trustee and the proceeds will be divided between the estate and the credit union 75%/25%.[2] The trustee's settlement agreement with the credit union provided, among other things, that "[The credit union's] interest in the Mercedes . . ., including a lien perfected by delivery of the Pink Slip, shall be avoided pursuant to 11 U.S.C. Section 548." Trustee's Ex. 1, at p. 2, ¶ 2.

"Section 522(g) . . . limits the ability of a debtor to claim an exemption where the trustee has recovered property for the benefit of the estate. Under § 522(g)(1), a debtor may claim an exemption where the trustee has recovered property pursuant to §§ 510(c)(2), 542, 543, 550, 551 or 553 only if the property was involuntarily transferred and the debtor did not conceal the transfer or an interest in the property." Hitt v. Glass (In re Glass), 164 B.R. 759, 761 (9th Cir. BAP 1994), aff'd 60 F.3d 565, 570 (9th Cir. 1995). Thus, "where a debtor voluntarily transfers property in a manner that triggers the trustee's avoidance powers or the debtor knowingly conceals a prepetition transfer or an interest in property, and such property is returned to the estate as a result of the trustee's actions directed toward either the debtor or the transferee, the debtor is not entitled to claim an exemption under § 522(g)(1)." Id. at 764-65.

"It is not necessary for the trustee to commence a formal adversary proceeding or obtain a final judgment to prevail on an objection to a debtor's claim of exemption pursuant to § 522(g)(1)." Glass, 164 B.R. at 765. The trustee's threat to use his avoidance powers to recover the property, which results in recovery of the property, is sufficient. Glass v. Hitt (In re Glass), 60 F.3d 565, 569 (9th Cir. 1995).[3]

> A trustee, however, must present sufficient facts upon which a bankruptcy court could reasonably conclude that a debtor transferred property in such a manner as to invoke the trustee's avoidance powers . . ., the transfer was voluntary or the debtor knowingly concealed the transfer or an interest in the property, and the property was returned to the estate as the result of the trustee's efforts, not limited to actions directed toward the transferee.

Hitt v. Glass, 164 B.R. at 765.

Here, the trustee asserts Carissa transferred title to Tim, who in turn, gave a security interest to the credit union to secure a loan but breached his promise to provide a valid certificate of title so the credit union could perfect its security interest. The transfer of title from Carissa to Tim and the transfer of a security interest from Tim to the credit union both constituted transfers, as defined by the Bankruptcy Code.[4] Thus, both qualified as transfers within the meaning of § 522(g)(1) and both were voluntary. The facts alleged by the trustee and the credit union with respect to the transfer of the vehicle from Carissa to Tim and with respect to the credit union's loan to Tim, Tim's promise to secure the loan with a perfected security interest in the vehicle, and his failure to provide the credit union with a certificate of title sufficient to allow it to perfect that interest result in the court concluding that the transfers were done in such a manner as to invoke the trustee's avoidance powers. The court also concludes that the vehicle has been returned to the estate as a result of the trustee's efforts, and specifically, of his threats to use his avoidance powers. In short, the trustee has recovered possession of the vehicle from Loan Mart and has recovered a 75% interest in the proceeds of the vehicle from the credit union, both under threat of using his avoidance powers. Thus, it appears § 522(g)(1) precludes the debtors from exempting the vehicle.

The debtors originally opposed the trustee's objection on the ground that the burden of proof is on the trustee and that he had failed to meet the burden of proving the exemption should be disallowed. The court disagreed in a tentative ruling that appears in the court's minutes for the July 29, 2015 hearing on the objection. For purposes of this final ruling, the court reiterates here that the burden of proof of an exemption claimed under California law, as are the debtors' claims of exemption in the vehicle, is on the debtors. See In re Tallerico, 532 B.R. 774, – , 2015 Bankr. LEXIS 2179, *11, *30-*31 (Bankr. E.D. Cal. June 30, 2015); In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. June 8, 2015); see also In re Barnes, 275 B.R. 889, 899, n.2 (Bankr. E.D. Cal. 2002). After the tentative ruling was issued, the court gave the debtors an opportunity to supplement the evidentiary record and they have done so.

Carissa has testified she was under great stress and emotional strain caused by a divorce from her former spouse, and was under a doctor's care for stress and emotional issues, at the time she obtained a title loan from Loan Mart, in March of 2013. She adds that at that time, she intended to pay under the terms of the loan documents and did not intend to file bankruptcy. She filed a chapter 13 case in October of 2013 to try to save her home from foreclosure and to stop Loan Mart "from incessantly calling [her] about payment." C. Aldrich Decl., filed July 28, 2015, at 2:8-9. Carissa married Tim in February of 2014; in May of 2014, her chapter 13 case was dismissed, according to Carissa because she was having trouble obtaining a mortgage loan modification. She testifies that after the case was dismissed, the collection calls from Loan Mart resumed, were harassing in nature, and "exacerbated [her] stress and emotional issues to the point where [she] was terrified for [her] safety and that of [her] family." Id. at 2:19-20. She is still suffering from those effects. Carissa states that in December of 2014, she was advised by an attorney that Loan Mart might have waived its security interest in the vehicle by filing a state court complaint against her for money rather than for possession of the vehicle, but that Loan Mart nevertheless repossessed the vehicle that month. Finally, she states that since her first chapter 13 case was dismissed, she has changed her plans with regard to her debts, but her previous cases "were not done with the intent to defraud any creditor." Id. at 3:6-7.[5]

Tim testifies he was not involved in Carissa's transaction with Loan Mart in March of 2013; that he "had no involvement with the Department of Motor Vehicles related to the title to the [vehicle] prior to the date [he] purchased [the] vehicle on or about September 17, 2014" (T. Aldrich Decl., filed July 28, 2015, at 1:25-27)); that he purchased the vehicle from Carissa with financing from the credit union; that at the time of his financing and purchase of the vehicle, in September of 2014, he was "gainfully employed and fully intended on performing under the financing agreement [he] executed with [the credit union]" (id. at ¶ 6), and did not intend to file bankruptcy. He concludes: "In late 2014 I became unemployed and it was in early 2015 that I first considered, with great reservation and embarrassment, the possibility of filing for bankruptcy protection." Id. at ¶ 8.

None of this testimony, either of Carissa or Tim, is sufficient to carry their burden of proving their entitlement to an exemption in the vehicle in light of § 522(g)(1), nor does the court fine it particularly relevant. They do not dispute that the transfers alleged by the trustee were made by them or that they were voluntary. Although Carissa claims she intended to repay her loan from Loan Mart, she describes that loan as a "title loan on the [vehicle]" and does not deny that she promised to give Loan Mart a perfected security interest in the vehicle or explain why she failed to do that.[6] Although her conduct in connection with that loan is not directly related to the transfers the trustee has challenged, it sets the stage for those transfers in that it was the same conduct Tim engaged in a year and an half later when he borrowed from the credit union.

Carissa does not address the transfers challenged by the trustee at all – she does not mention either her transfer of the vehicle to Tim or his agreement to give a perfected security interest to the credit union. It would be implausible to presume Carissa did not know Tim was going to borrow from the credit union as their statement of affairs states that Tim obtained the credit union loan to fund his purchase of the vehicle from Carissa for $26,000. Carissa refers to her changing plans with respect to her debts which, as she says, are reflected in the court's record, and states her prior cases were not filed with the intent to defraud any creditor. She does not mention that on September 17, 2014, the day Tim testifies he purchased the vehicle from Carissa, Carissa was in a pending chapter 13 case she had filed just six days before, on September 11, 2014. She did not seek permission from the court to sell the vehicle to Tim.

In fact, on September 25, 2014, one week after she sold the vehicle to Tim and he borrowed from the credit union, Carissa signed a declaration in support of her application to extend the time to file schedules and statements in that case. In that declaration, she testified: "My case was filed under stressful circumstances, so as to prevent an imminent repossession and/or other executions of judgment. Due to the shortness of time before the repossession, not all of the Schedules, Statements and other necessary documents could be properly completed to accompany the filing of the petition." C. Aldrich Decl., filed Sept. 25, 2014 in Case No. 14-29133, at 1:20-24.

The strong inference from this testimony and from her declaration in the present case to the effect that Loan Mart was harassing her after the dismissal of her first chapter 13 case, which occurred on May 7, 2014, is that the repossession Carissa was trying to stop was Loan Mart's repossession of the vehicle. That is the only vehicle either debtor has reported as being the subject of a security interest. It is also a reasonable inference that the solution Carissa and Tim came up with to stop the repossession was for Carissa to sell the vehicle to Tim and for Tim to fund the sale by a loan from the credit union. Tim has not testified as to why he did

not follow through on his promise to do whatever was necessary to allow the credit union to perfect its security interest.[7]

Finally, the debtors do not dispute that Tim borrowed $27,040 from the credit union in September of 2014 which Tim apparently used to purchase the vehicle from Carissa. In other words, one or both of them received $27,040 from the credit union in September. Their schedules and statement of affairs in this case, filed five months later, do not disclose how that cash was disposed of. On their Schedule B, they disclosed no cash and a total of $17.94 in two bank accounts. Although required to disclose in their statement of affairs all transfers of property within the prior two years, they did not disclose how the cash from the credit union was spent.[8]

Given all of these circumstances, the court concludes that the debtors transferred the vehicle – from Carissa to Tim and from Tim to the credit union – in such a manner as to invoke the trustee's avoidance powers. Accordingly, and because the transfers were voluntary and the vehicle has been recovered through the trustee's efforts, including his threats to use his avoidance powers, the debtors have failed to meet their burden of proving that, in light of § 522(g)(1), they are entitled to their claims of exemption, and the trustee's objection will be sustained.

The court will hear the matter.

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1 The court will refer to the debtors by their first names for ease of reference; no disrespect is intended.

2 The court has also approved the trustee's employment of West Auctions, Inc. to sell the vehicle.

3 The United States Supreme Court's decision in Law v. Siegel, 134 S.Ct. 1188 (2014), is not an impediment to the application of § 522(g)(1). Although the court may no longer disallow a debtor's exemption based on the debtor's bad faith (134 S.Ct. at 1196), § 522(g) is among the "carefully calibrated exceptions and limitations" on a debtor's entitlement to an exemption. Elliott v. Weil (In re Elliott), 523 B.R. 188, 197 (9th Cir. BAP 2014).

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> The term "transfer" means--
> (A) the creation of a lien;
> (B) the retention of title as a security interest;
> (C) the foreclosure of a debtor's equity of redemption; or
> (D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with--
> (i) property; or
> (ii) an interest in property.

11 U.S.C. § 101(54).

5 Carissa filed a second chapter 13 case on September 11, 2014 and a first chapter 7 case on February 4, 2015. Both were dismissed for failure to file required schedules and statements.

6 The loan agreement attached to Loan Mart's adversary complaint, of which the

court takes judicial notice, states that Carissa grants California Check Cashing Stores, LLC a security interest in the vehicle and will "do all acts necessary to ensure [its] lien interest appears on the certificate of ownership to the Vehicle." Complaint in AP No. 15-2121, Ex. A.

7 See proof of claim filed June 5, 2015, Claim No. 8, Ex. A, p. 2 ["You agree to do whatever the credit union thinks necessary for the perfection of its security interest in the property, such as signing a financing statement or vehicle registration. You promise that, except for the Credit Union's security interest, the collateral is owned free and clear and no one else has any interest in or claim against the property that You have not already told the Credit Union."].

8 Where required to list all payments to creditors in the prior 90 days, they listed the credit union, claiming they had made "monthly payments of $405" and had paid a total of $1,215. The credit union's adversary complaint, on the other hand, states that Tim failed to make the first payment on the loan, which was due December 16, 2014, and has made no payments at all.

3.	15-21617-D-7 JMC-1	TIM/CARISSA ALDRICH	CONTINUED MOTION BY JOSEPH M. CANNING TO WITHDRAW AS ATTORNEY 6-30-15 [61]

4.	13-27820-D-7 LRR-3	GILBERT/LISA GRANADOS	MOTION TO AVOID LIEN OF THE BEST SERVICE CO. INC. 7-15-15 [38]

Final ruling:

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

5.	15-25121-D-7 EAT-1 NATIONSTAR MORTGAGE, LLC VS.	PETER AMENDOLA AND VANESSA PERALTA	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-17-15 [15]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

6. 15-25121-D-7 PETER AMENDOLA AND VANESSA PERALTA
VVF-1 HONDA LEASE TRUST VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
7-22-15 [21]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

7. 14-22526-D-7 DAVID JONES
14-2133 PLC-2
CHEPLICK V. JONES
MOTION FOR COMPENSATION FOR PETER CIANCHETTA, DEFENDANTS ATTORNEY(S)
7-21-15 [52]

Tentative ruling:

This is the defendant's motion for an award of the attorney's fees he incurred as the prevailing party in this adversary proceeding. The plaintiff has filed opposition and the defendant has filed a reply. For the following reasons, the motion will be denied.

The plaintiff alleged in his complaint in this adversary proceeding that he had obtained a state court judgment in the amount of $55,695 against Telecomm Engineering, Inc. for rent due under a lease of real property between the plaintiff as lessor and Telecomm as lessee; that the defendant, who was a shareholder in Telecomm, fraudulently contrived to transfer the assets of Telecomm to a new business and then to put Telecomm into bankruptcy so its creditors, including the plaintiff, would be unable to collect; and that the defendant owed the plaintiff a debt in the amount of the plaintiff's judgment against Telecomm, which debt should be determined to be nondischargeable pursuant to § 523(a)(2), (4), and (6).[1] By way of an amended complaint, the plaintiff added a cause of action to deny the defendant's discharge pursuant to § 727(a)(7). The defendant prevailed at trial.

The defendant now seeks to recover his attorney's fees on two grounds. First, he claims he is entitled to fees pursuant to Cal. Civ. Code § 1717, which provides for an award of attorney's fees to the prevailing party "[i]n any action on a contract." Cal. Civ. Code § 1717(a). Second, he contends he is entitled to fees pursuant to § 523(d), which provides for an award of attorney's fees to a debtor who prevails in an action to determine the dischargeability of a consumer debt under § 523(a)(2). For the following reasons, the defendant is not entitled to an award under either statute.

As to the first, Cal. Civ. Code § 1717, the argument fails because this adversary proceeding was not an "action on a contract." In the defendant's view, "the underlying cause of action was under a contract" (Motion for Attorney's Fees, filed July 21, 2015, at 2:5-6); namely, the lease between the plaintiff and Telecomm. As support for this proposition, the defendant cites paragraph 49 of the plaintiff's amended complaint, in which the plaintiff alleged: "[The plaintiff] secured a judgment against Telecomm pursuant to a contract and an arbitration award. The award was based upon services already received by Telecomm. To avoid repayment of the funds owed without losing any of the assets, [the defendant] fraudulently transferred all the assets from Telecomm to Everything Radios for his future

personal gain." Plaintiff's Amended Complaint, filed Dec. 17, 2014 ("Amended Complaint"), at 9:11-14.

That allegation is far from sufficient to turn the adversary proceeding into an action on the lease. In fact, the adversary proceeding had virtually nothing to do with the lease; it had to do with whether the defendant, by his actions, wrongfully deprived the plaintiff of the ability to collect on his judgment against Telecomm. In the adversary proceeding, the plaintiff did not seek a determination of amounts due under the lease, of the validity of the lease, as to the terms of the lease, as to whether the lease was breached, or anything else having to do with the lease. The court did not make any findings or reach any conclusions about the lease, and it is doubtful, in light of principles of preclusion, it would have had the power to do so.[2]

The defendant cites Kachlon v. Markowitz, 168 Cal. App. 4th 316 (2008), for the unremarkable proposition that, "[i]n determining whether an action is 'on the contract' under section 1717, the proper focus is not on the nature of the remedy, but on the basis of the cause of action." 168 Cal. App. 4th at 347. The actual holding of the case was that an action for declaratory and injunctive relief may be an "action on a contract" for purposes of Civ. Code § 1717. Id. at 347-48. The relief sought in that case was (1) a declaration that a promissory note must be cancelled because it had been paid in full, and (2) an injunction to stop a foreclosure alleged to be in violation of a deed of trust. The causes of action supporting both remedies has specifically to do with the parties' contracts; namely, the promissory note and deed of trust between them. In contrast, the plaintiff's causes of action in this adversary proceeding were not based on the lease and did not derive in any way from the parties' conduct under the lease.

This adversary proceeding was more akin to the facts in Loube v. Loube, 64 Cal. App. 4th 421 (1998), in which a client of a law firm sued the firm for legal malpractice and lost. The law firm then claimed it was entitled to an award of attorney's fees under Civ. Code § 1717, relying on the attorney's fee clause in the parties' retainer agreement. The court disagreed.

> Here, although the parties had a contractual relationship, and appellant's claim for legal negligence arose from the relationship between them, which relationship was founded on a contract, the cause of action sounded in tort and was no more "on the contract" than a claim for breach of fiduciary duty or for fraud involving a contract. It follows that Civil Code section 1717 provides no basis for an award of attorney fees.

64 Cal. App. 4th at 430.

Finally, the defendant cites Santisas v. Goodin, 17 Cal. 4th 599 (1998), which held that "[i]f a contractual attorney fee provision is phrased broadly enough, as this one is, it may support an award of attorney fees to the prevailing party in an action alleging both contract and tort claims." 17 Cal. 4th at 608. That case involved a purchaser of real property who sued the seller for damages caused by alleged defects in the home he purchased. The complaint included causes of action for breach of contract, negligence, deceit, negligent misrepresentation, and suppression of fact. The court found that all the claims were covered by the attorney's fees clause in the purchase agreement because all were "claims arising out of the execution of the agreement or the sale." Id. at 608.

The contract in Santisas provided for attorney's fees in an action "arising out of the execution of this agreement or the sale . . . ." See 17 Cal. 4th at 607. The lease between the plaintiff and Telecomm provided for attorney's fees in "any arbitration or litigation concerning this Lease" or "an action or arbitration . . . arising out of or in connection with this Lease." Defendant's Ex. A., ¶ 30. The court finds that this adversary proceeding did not "concern" the lease, it concerned the defendant's conduct vis-a-vis the assets of Telecomm after the plaintiff had already obtained his judgment on the lease. And although the phrases "arising out of" and "in connection with" are very broad, they also do not cover this adversary proceeding. The plaintiff's petition for arbitration, which resulted in the arbitration award and state court judgment, "arose out of" and was "in connection with" the lease, and the arbitrator applied the attorney's fee clause in the lease, concluding that "[s]ince each party prevailed on some element of their claims, each side will bear its own attorneys' fees and costs." Amended Complaint, at 4:19-20.

The defendant also contends he is entitled to an award of attorney's fees under § 523(d). This subdivision does not apply for the simple reason that the adversary proceeding was an action to recover on a business debt, not a consumer debt. A "consumer debt" is a "debt incurred by an individual primarily for a personal, family, or household purpose." § 101(8). In an effort to fit the defendant's alleged debt to the plaintiff into the term "personal," the defendant uses "personal" where he really means "individual." Thus, the defendant asserts: "The debt in question was originally a business debt of a now bankrupt[] corporation. Cheplick asserted that the debt was a personal obligation of the debtor and therefore a consumer debt and was a personal liability to the debtor. This was the personal bankruptcy of the debtor." Defendant's Memo. of P. & A., filed July 21, 2015, at 3:10-14.

That the plaintiff asserted the debt was a "personal" obligation of the defendant means he claimed it was an obligation of the defendant as an individual. Similarly, the defendant filed his bankruptcy case as an individual; thus, it was an individual bankruptcy (as opposed to a corporate or partnership bankruptcy). It may also be termed a "personal" bankruptcy, as it is the bankruptcy of a "person," but that is not the same "personal" used in the definition of a consumer debt. The Code's definition focuses on the purpose for which the debt was incurred; thus, if the debt was incurred for a business purpose, the fact that the creditor seeks to hold an individual – or a "person" – liable does not transform the debt into a "personal" debt for purposes of the "consumer debt" definition. In other words, once a business debt, always a business debt.

To conclude, the defendant has not shown any contractual, statutory, or other basis on which he is entitled to an award of attorney's fees as the prevailing party, and the motion will be denied. The court will hear the matter.

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1 Unless otherwise indicated, all statutory references are to the Bankruptcy Code, Title 11, United States Code.

2 The court did refer to the lease in its findings and conclusions, read into the record, but only as background to the arbitrator's findings and conclusions, which the court described briefly. The court did not make any findings or conclusions regarding disputed factual or legal issues concerning the lease.

8. 14-22526-D-7 DAVID JONES
PA-10

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-1-15 [130]

Tentative ruling:

This is the trustee's objection to the debtor's exemption of two IRAs, one of which is the debtor's and the other his wife's, claimed in an amended Schedule C filed May 1, 2015.1 The debtor has filed opposition and the trustee has filed a reply. For the following reasons, the court will continue the hearing to allow the parties to conduct discovery and supplement the evidentiary record.

As the trustee points out, the debtor has taken a shotgun approach, claiming the IRAs as exempt under all three subdivisions of Cal. Code Civ. Proc. § 704.115(a), thus claiming the IRAs are either private retirement plans, profit-sharing plans designed and used for retirement purposes, or self-employed retirement plans (IRAs). As the trustee adds, the IRAs cannot be all three. The trustee claims this approach is improper. The court does not agree. If any of the statutes cited by the debtor in his amended Schedule C provides an exemption for the IRAs, the objection will be overruled.

The court follows the recent decisions of other departments of this court in holding that the burden of proof of exemptions claimed under California law is on the debtor. See In re Tallerico, 532 B.R. 774, 780, 787-88 (Bankr. E.D. Cal. June 30, 2015); In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. June 8, 2015); see also In re Barnes, 275 B.R. 889, 899, n.2 (Bankr. E.D. Cal. 2002). Thus, with respect to the exemptions claimed by the debtor under California law, the debtor has the burden of proof.

The debtor also claims the IRAs as exempt under a federal statute, § 522(b)(3)(C) of the Bankruptcy Code. Arguably, Fed. R. Bankr. P. 4003(c) puts the burden of proof on the trustee. However, the Supreme Court's ruling in Raleigh v. Ill. Dep't of Revenue, 530 U.S. 15, 20-21 (2000), "casts doubt on the validity of Rule 4003(c)'s allocation of the burden of proof" (Tallerico, 532 B.R. at 788), and "the rule's validity remains an open issue in this circuit." Id. at 789. In any event, however, this particular exemption statute, § 522(b)(3)(C), comes with its own allocation of the burden of proof.

The statute provides for the exemption of "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." § 522(b)(3)(C). The statute itself places the burden of proof on the debtor. Diamond v. Trawick (In re Trawick), 497 B.R. 572, 585 (Bankr. C.D. Cal. 2013).

> **For purposes of paragraph (3)(C) . . ., the following shall apply:**
> **(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.**
> **(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that--**
> **(i) no prior determination to the contrary has been made by a**

> court or the Internal Revenue Service; and
>
> (ii) (I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or
>
> (II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

§ 522(b)(4). Having reviewed the evidentiary record as it presently stands, the court concludes the debtor has not met his burden of proof under either state law, with respect to his Cal. Code Civ. Proc. § 704.115(a)(1), (2), and (3) claims, or federal law, with respect to the § 522(b)(3)(C) claims.

Under Cal. Code Civ. Proc. § 704.115(a)(1), (2), and (3), the debtor must demonstrate the IRA's are either private retirement plans, profit-sharing plans designed and used for retirement purposes, or "self-employed retirement plans [or] individual retirement annuities or accounts provided for in the Internal Revenue Code of 1986, as amended, including individual retirement accounts qualified under Section 408 or 408A of that code . . .," and if they are the latter of the three, that the amounts in the IRAs are necessary for the support of the debtor and his spouse in retirement. Cal. Code Civ. Proc. 704.115(e). There is no evidence the IRAs are either private retirement plans or profit-sharing plans; thus, the court will focus on whether they are qualifying self-employed retirement plans.

To qualify for exemption under that subdivision, the IRAs must be provided for in the Tax Code, and in particular, if they are individual retirement accounts, they must be qualified under § 408 or § 408A of the Tax Code, and in any event, they must be in amounts that "do not exceed the maximum amounts exempt from federal income taxation" under the Tax Code. Cal. Code Civ. Proc. § 704.115(a)(3). To qualify for the federal exemption, under § 522(b)(3)(C), the debtor must demonstrate that "(1) the amount debtor seeks to exempt [are] retirement funds; and (2) the retirement funds [are] in an account that is exempt from taxation under one of the provisions of the [IRC] specified in § 522(b)(3)(C)." Mullen v. Hamlin (In re Hamlin), 465 B.R. 863, 870 (9th Cir. BAP 2012).

The debtor testifies he created his IRA with AXA Equitable by way of a rollover from the 401(k) plan of a former employer, Telecomm Engineering, Inc., which he alleges he consolidated with another IRA he had with MONY Life such that he now has a single IRA with AXA Equitable. He has submitted copies of account statements from AXA and MONY on which the accounts are referred to as IRAs, adding: "I have always understood the AXA accounts are retirements funds and labeled as such and the funds are in an account exempt under 26 U.S.C. §408." Debtor's Decl., filed July 15, 2015, at 2:16-17. Finally, in an incomprehensible series of negatives, the debtor testifies:

> I am unaware that no prior determination that the AXA IRA is not in compliance with tax code has been made by a court or the IRS and I believe that the retirement fund are in "substantial compliance" with the Internal Revenue Code ("IRC") and if not, [that] I am not materially responsible for that failure.

Id. at 2:19-22.

The debtor's wife recites the same conclusions as to what she has "always understood" and as to whether there has been "no prior determination" of compliance with the Tax Code.2 The problem here, from an evidentiary standpoint, is just that:

these are conclusions with no foundation as to the underlying factual allegations. As such, they are entitled to little, if any, weight. Nor do the AXA and MONY account statements themselves demonstrate that the IRAs are properly established qualified accounts or that the amounts do not exceed the maximum amounts exempt from taxation.

There is an aspect of the debtor's opposition and declaration that raises an additional question. The opposition states that the debtor requested and obtained a letter from AXA acknowledging that the IRA "is properly in existence under the IRS Code." Debtor's Opp., filed July 15, 2015, at 10:6-7. However, the debtor testifies only that he requested a letter supporting his conclusion that "the funds are in an account exempt under 26 U.S.C. §408." Debtor's Decl., at 2:17-18. He does not testify that he received such a letter or any letter. Further, the debtor's exhibits were filed under cover of a list of the alleged exhibits; the list includes two Exhibits F, the second of which is listed as a "Letter from AXA regarding IRS compliance," but there is no such letter attached. Instead, there is a single Exhibit F, which is a MONY Life account statement for the debtor's wife's IRA. These inconsistencies raise doubts about whether the debtor received such a letter. The debtor should note in regard to such a letter, if he did receive one, he will need to submit it in the form of properly authenticated evidence that is not hearsay.

Both Cal. Code Civ. Proc. § 704.115(a)(3) and § 522(b)(3)(C) require a finding that the amounts in the accounts are exempt from federal income taxation. Proof of that fact, for purposes of § 522(b)(3)(C) and very likely § 704.115(a)(3) as well, is not as straightforward as an account statement that labels the account an IRA. Instead, the debtor must show either that the retirement fund has received a favorable determination from the IRS that was in effect as of the petition date or, if the fund has not received a favorable determination, no contrary determination has been made by a court or the IRS and (1) the fund is in substantial compliance with the Tax Code, or (2) if it is not, the debtor is not materially responsible for that failure. The debtor's evidence falls short of satisfying his burden of making one of these alternative required showings.

Finally, the trustee contends that, if the funds are IRAs exempt under § 704.115(a)(3) to begin with, the debtor has failed to demonstrate that the amount is necessary for his and his spouse's support in retirement, as required by § 704.115(e). The debtor has submitted no evidence on this issue, apparently in the mistaken belief the court will simply make an assumption in his favor. The debtor will need to establish a sufficient evidentiary record to support any such finding by the court.

To conclude, the trustee contends the issue of the burden of proof was a preliminary issue the court must determine, and that once that determination has been made, the court should set a discovery bar date and a schedule for the filing of further evidence and briefing. The court will grant this request. The debtor should note that if he has had difficulty obtaining the necessary proof, he will also be able to conduct discovery.

The court will hear the matter.

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1 The debtor characterized the accounts as IRAs in his schedules; thus, the court will refer to them that way for ease of reference only. Based on the present evidentiary record, the court is not prepared at this time to conclude that they are

actually IRAs.

2 She also testifies the amount in her IRA includes money she rolled over from an IRA at MONY Life to an AXA IRA plus an increase in value and a contribution she made in 2014 from separate property funds she inherited. She has filed a copy of her MONY Life statement, although not one from AXA.

9.	13-29030-D-7	WILLIAM/JANET CHENG	MOTION TO VACATE AND SET ASIDE MINUTE ORDER DOC. #822 OF 5/28/15 6-5-15 [833]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. The matter is resolved without oral argument. This is the debtors' motion to vacate and set aside what the debtors refer to as "minute orders" appearing on the court's docket at DNs 812, 814, and 822. The documents at those places on the docket are actually civil minutes (DNs 812 and 822) and one minute order (DN 814). The minute order resulting from the ruling contained in the civil minutes appearing at DN 822 is to be found at DN 824. Thus, the court will consider the motion a motion to vacate and set aside both sets of civil minutes and minute orders; in other words, all the documents at DNs 812, 814, 822, and 824. The basis for the motion is that the matters addressed in those minutes and minute orders are on appeal.

"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 by their notice of appeal filed March 10, 2015. The court has carefully reviewed the notice of appeal, together with the order the debtors have appealed from and the memorandum decision supporting that order. The order appealed from is this court's order filed February 27, 2015, DN 785. By that order, the court denied motions the debtors had filed December 8, 2014 and February 6, 2015, DNs 740 and 765, by which the debtors had purported to set before a different judge of this court their motions to vacate earlier orders that had been issued by the judge in this department, the department to which their case is and has always been assigned. By the February 27, 2015 order, the court also denied the debtors' request, contained in a Notice to Judge Klein Dept. C, filed February 19, 2015, DN 780, in which they complained that their requested hearing had not been calendared and requested that it be calendared.

The court noted in its February 27, 2015 order, and notes again, that the debtors did not appeal from the earlier orders issued by this department which they were requesting be vacated by a different judge. Thus, the only matter determined by the February 27, 2015 order – the order that is on appeal – is the question whether their motions to vacate this department's earlier orders should have been calendared and heard by the different judge of this court, as requested by the debtors. The first order the debtors seek by the present motion to vacate, DN 814, was, in contrast, an order denying their motion to vacate an earlier order denying their motion to disqualify the judge their case is assigned to. Although the debtors' attempt to disqualify that judge is akin in some respects to their motions to have a different judge vacate that judge's earlier orders, it is not the same. The debtors did not appeal from the order on their motion to disqualify, only from the orders denying their attempts to set motions to vacate in front of the other

judge. Thus, the court's order, DN 814, denying their motion to vacate the order denying their motion to disqualify is not the subject of the pending appeal and this court was not divested of jurisdiction to rule on the motion to vacate the order denying the motion to disqualify. Thus, the pending appeal is not a basis on which this court must or should vacate the order on the motion to vacate, DN 814.

The second order the debtors seek by the present motion to vacate, DN 824, was an order denying their motion objecting to the trustee's alleged wrongful attempt to discharge himself from alleged criminal acts. That matter is not a part of the pending appeal; thus, the appeal is not a basis on which this court must or should vacate that order, DN 824.

For the reasons stated, and there being no other basis on which to vacate either the orders, DNs 814 and 824, or the rulings on which they were based, as contained in the civil minutes at DNs 812 and 822, the motion will be denied by minute order. No appearance is necessary.

10. 15-24733-D-7 CAROL NANSEL
PPR-1
DRRF TRUST 2015-1 U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
7-24-15 [21]

Final ruling:

This matter is resolved without oral argument. This is DRRF Trust 2015-1 U.S. Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

11. 15-25834-D-7 DANIEL MCALLISTER
RCO-1
THE BANK OF NEW YORK MELLON VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
7-29-15 [13]

DEBTOR DISMISSED: 8/10/2015

12. 12-30440-D-7 ANA PACHECO
JCK-3

MOTION TO AVOID LIEN OF ZENITH ACQUISITION CORP.
7-20-15 [27]

Final ruling:

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

13. 15-24746-D-7 ANGELL JENNINGS — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
WELLS FARGO BANK, N.A. VS. — 7-17-15 [10]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

14. 10-26347-D-7 LESLIE BRACK — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DAVID BRACK
MFB-4
7-27-15 [46]

Final ruling:

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.

15. 15-24848-D-7 SAOVANNI MEAS — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS. — 7-1-15 [13]

16. 15-25148-D-7 KIMBERLY RAGSDALE — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1
SANTANDER CONSUMER USA, INC. — 7-28-15 [17]

VS.

Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, 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. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

17. 15-23457-D-7 LARRY LENZ
JHK-1
FORD MOTOR CREDIT COMPANY, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-16-15 [16]

Final ruling:

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

18. 13-34659-D-7 GERARDO CHAVEZ
SSA-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JUAN CHAVEZ
7-6-15 [44]

Final ruling:

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.

19. 15-21861-D-12 LAURA BRANDON
JPJ-1

MOTION TO DISMISS CASE
7-17-15 [28]

20. 14-29663-D-7 DEBRA ROY
SAH-2

MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
7-22-15 [44]

Final ruling:

This is a motion signed and filed by attorney Stephan Hoover ("Counsel"), purporting to act as attorney for the debtor and seeking an award against the Service Employees International Union United Healthcare Workers-West (the "Union") for damages for willful violation of the automatic stay and for contempt sanctions for violation of the debtor's bankruptcy discharge. The Union has filed opposition and the debtor has filed a reply.

Counsel has not substituted into the case as attorney of record for the debtor. Pursuant to this court's local rules, an attorney who is retained to represent a debtor in a bankruptcy case is retained for all purposes in the case other than adversary proceedings. LBR 2017-1(a)(1). With an exception not applicable here, "no attorney may participate in any action unless the attorney has appeared as an attorney of record." LBR 2017-1(b)(1). Counsel has not made an appearance as the debtor's attorney of record in any of the ways authorized by the court's rules. See LBR 2017-1(b)(2). As a result, unless Counsel files a properly-executed substitution of attorneys before the time of the hearing, the court will deny the motion for the reason that it was signed and filed by an individual not authorized to appear on behalf of the debtor. If an appropriate substitution is filed, the court will hear the matter and, for the following reasons, intends to deny the motion.

The debtor testifies she is employed by the California In-Home Supportive Services Program ("IHSS"),1 and that, "[a]s part of IHSS, [she] was required to either join [the Union] or to pay fair share services fees in lieu of membership." Debtor's Decl., filed July 22, 2015, at 2:6-8. On or about July 29, 2014, either the debtor signed or someone else signed the debtor's name on a Union Membership Application/Payroll Deduction Authorization (the "Membership Application").2 The debtor continued to work for IHSS after she filed her bankruptcy petition, on September 29, 2014. She contends the continuing automatic deduction of union dues or fees from her paychecks after the filing of the petition violated the automatic stay, and after her discharge was entered, violated the discharge order.3 Thus, she seeks an award of actual damages, emotional distress damages, attorney's fees, and punitive damages. It should be made clear that the debtor was current in her payment of dues or fees as of the petition date; the dues or fees collected post-petition were on account of the work the debtor did and the wages she earned post-petition.

The debtor's theory is that the Membership Application created a pre-petition claim as to all of the dues or fees that were to be collected under it, and thus, that the collection of dues and fees after the debtor's petition was filed constituted the collection of "a claim against the debtor that arose before the commencement of the case," conduct that is prohibited by § 362(a)(6).4 Citing § 101(5),5 the debtor concludes:

> **Here, the membership agreement, was irrevocable for one year after July 29, 2014. This irrevocable obligation created a liquidated,**

> contingent, unmatured, legal, unsecured claim by [the Union] which arose on July 29, 2014. The agreement clearly states that an obligation is entered into which allows [the Union] to claim a defined amount of funds (i.e.. liquidated), the right to which matures upon every pay period (i.e. unmatured), which is not secured by an interest in property (i.e. unsecured), and is contingent upon Debtor's continued employment (i.e. contingent). As such, the right to payment for the entire year arose on July 29, 2014, subject to Debtor's continued employment, maturing on a bi-monthly basis.

Mot. at 5:12-20.6

The Union disagrees. It claims the debtor's obligation to pay dues or fees "does not arise unless and until she voluntarily performs at least twenty hours of work as an In-Home Supportive Services provider for the San Joaquin Public Authority." Union's Opposition, filed August 12, 2015, at 4:13-15. As the debtor was current in her payment of dues or fees at the time she filed her petition, the Union had no pre-petition claim against her, and its collection of dues or fees post-petition was the collection of a post-petition debt not subject to the automatic stay or the discharge order.

The court finds it unnecessary to determine whether the Membership Application created a pre- or a post-petition claim in favor of the Union because the debtor's duty to pay fees or dues did not arise under the Membership Application. It was simply a term of the debtor's employment, pursuant to the Memorandum of Understanding between IHSS and the Union (the "MOU"). The MOU, a copy of which the Union has filed and authenticated by the declaration of the Union's Lead Membership Auditor, Ivan Gasparini, covers the period October 1, 2012 to March 31, 2016. After recognizing the right of IHSS care providers to join or refuse to join the Union, the MOU provides that an IHSS provider authorized to work 20 or more hours per month "shall, as a condition of employment," either be a member of the Union or pay agency fees to the Union or, if the provider is a member of a religious group that has historically conscientiously objected to joining or financially supporting a public employee organization as a condition of employment, pay fees to one of three charities designated in the MOU. Union's Ex. A to Gasparini Decl., ¶ 3.4(g)(1). These alternative requirements, as a condition of employment, are authorized by Cal. Gov't. Code § 3502.5.7

The court finds that the debtor's obligation to pay union dues or agency fees arose not under the Membership Application but as a condition of her employment, as fixed by the governing agreement between her employer and the Union. If the debtor had discontinued her employment with IHSS after she filed her bankruptcy petition, the Union would have had no right to continue to impose an obligation on her for ongoing dues or fees. But by continuing to work for IHSS post-petition, the debtor accepted – post-petition – the obligation to pay the dues or fees as a condition of her post-petition employment.

The debtor does not contend her obligation to pay dues or fees as a condition of her continued employment, as fixed by the MOU, represented a pre-petition obligation the collection of which would be subject to the automatic stay and the discharge order. Instead, she relies solely on the Membership Application as giving rise to the alleged pre-petition claim.8 However, the Membership Application did not purport to impose on the debtor an obligation to pay dues or fees. The Membership Application merely stated: "I hereby voluntarily request and accept membership in SEIU United Healthcare Workers-West (SEIU-UHW) as my union and

exclusive representative with my employer concerning wages, hours and other conditions of employment. . . . I hereby authorize my employer to direct that dues be deducted from my wages in an amount sufficient to cover membership dues and to transmit that amount to SEIU-UHW . . . ." Debtor's Ex. A. The Membership Application also describes in brief the rights afforded members of the union and states, as a factual matter and not as something agreed to by the debtor: "All IHSS providers shall, as a condition of initial and continued employment, either join the union and pay membership dues or pay fair share services fees in lieu of membership." Id. (The Membership Application also mentions the conscientious objector exception.)

As indicated, the obligation to either join the union and pay dues or pay fees in lieu of union membership is not something the debtor "agreed to" by way of the Membership Application; it is something she agreed to each day she continued to accept employment with IHSS. Thus, as to the dues that accrued (or, in the debtor's words, matured) post-petition, the debtor became obligated, whether by implicit agreement or simply by continuing to work for IHSS, to pay those dues or fees out of her wages, as a condition of continuing, post-petition employment.

In her reply to the Union's opposition, the debtor relies heavily on the portion of the Membership Application in which she authorized the deduction of her union dues from her wages. She cites NLRB v. USPS, 833 F.2d 1195 (6th Cir. 1987), and United Steelworkers of America, Local 4671 (National Oil Well, Inc.) and Dugger, 302 N.L.R.B. 367 (1991), apparently for the sole purpose of distinguishing her case from Knutson v. Tredinnick (In re Tredinnick), 264 B.R. 573 (9th Cir. BAP 2001), cited by the Union in its opposition. The court has not relied on the Tredinnick case in this decision, and thus, finds no need to discuss the issues raised by Tredinnick or the allegedly distinguishing cases cited by the debtor. (The court assures the debtor, however, that it has reviewed those cases.)

As previously discussed, the debtor's obligation to pay dues or fees arose not from the Membership Application but as a condition of her ongoing employment. The court will now expand this finding, concluding that the debtor's obligation arose not from the portion of the Membership Application in which she authorized the automatic deduction of dues from her wages, but, again, it arose as a condition of her employment, employment which she continued post-petition.

The court has reviewed the remainder of the debtor's reply and finds nothing therein that would alter this ruling. For the reasons stated, the motion will be denied. The court will hear the matter.

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1 The Union identifies the debtor's employer as the San Joaquin County In-Home Support Services Public Authority ("San Joaquin Public Authority"). It does not matter to the outcome of this motion which is the name of the debtor's actual employer.

2 The debtor testifies someone else signed her name. Her motion states as follows: "As it is irrelevant to this action, Debtor currently takes no position as to the validity of the Membership Application signed on July 29, 2014." Debtor's Motion, filed July 22, 2015 ("Mot."), at 2:15-17.

3 It is unclear whether the deductions were for union dues or for fees in lieu of union membership. As the issue is not relevant to this decision, the court need not determine it.

4 Unless otherwise indicated, all statutory citations are to the Bankruptcy Code, Title 11, United States Code.

5 A "claim" means "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 . . . ." § 101(5)(A).

6 In fact, the Membership Application did not "clearly state" any of these things. It merely stated that the debtor voluntarily requested and accepted membership in the Union as her union and exclusive representative with her employer concerning wages, hours, and other conditions of employment; that she agreed to abide by the Union's constitution, bylaws, and contracts; that she authorized her employer to deduct her union dues from her wages and to transmit them to the Union; and that the authorization would be in effect and irrevocable unless revoked by the debtor by written notice during a 30-day period after any yearly period after the date of the authorization.

7 This statute is part of the Meyers-Milias-Brown Act, Government Code § 3500, et seq., which "applies to all local government employees in California." Mariscal v. Los Angeles City Employee Relations Bd., 187 Cal. App. 4th 164, 170 (2010). The statute provides that:

> **an agency shop agreement may be negotiated between a public agency and a recognized public employee organization that has been recognized as the exclusive or majority bargaining agent pursuant to reasonable rules and regulations, ordinances, and enactments, in accordance with this chapter. As used in this chapter, "agency shop" means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization.**

Cal. Gov't. Code § 3502.5(a).

8 This is somewhat confusing because, as indicated above, the debtor challenges the validity of the Membership Application, claiming she did not sign it. However, whether the Membership Application was valid or not is irrelevant, as it was the MOU and California public employment law that gave rise to the debtor's obligation to pay dues or fees. The Union has submitted evidence that the agency fees are in the same amount as the union dues. That is, it does not matter whether the debtor was a member of the Union or not, and hence, it does not matter whether the debtor signed the Membership Application or not.

21.	14-27267-D-7 RLG-3	SARAD/USHA CHAND	OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 1-4 7-14-15 [132]

Final ruling:

An amended notice of hearing was filed rescheduling this objection to be heard on October 21, 2015 at 10:00 a.m. No appearance is necessary on August 26, 2015.

22. 15-23372-D-7 JULIE HE
DMA-1

MOTION TO AVOID LIEN OF KENNY THAN
7-24-15 [16]

Final ruling:

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

23. 12-29374-D-7 KEITH GRIFFIN AND KELLY WEAVER-GRIFFIN
AP-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-15 [64]

Final ruling:

This case was converted to a Chapter 7 on June 18, 2015 and Irma Edmonds was appointed as the Chapter 7 trustee. Moving party failed to serve the Chapter 7 trustee. As a result, the hearing on this motion is continued to October 7, 2015 at 10:00 a.m. to allowing moving party to serve the Chapter 7 trustee. No appearance is necessary.

24. 14-26078-D-7 LUISITA SONGCO
ADJ-3

MOTION FOR CONTEMPT
7-23-15 [101]

25. 15-23698-D-7 KEVIN ADAMS
NLG-1
CENTRAL MORTGAGE CO. VS.

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

26. 09-29162-D-11 SH-333 — SK FOODS, L.P. — MOTION FOR ORDER SETTING DEADLINE TO FILE PROOFS OF CLAIM IN RESPONSE TO AMENDED SCHEDULE F
8-12-15 [5708]

27. 15-25381-D-7 — LORI SYMONS — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-4-15 [34]

Final ruling:

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

28. 15-25084-D-7 RLL-1 — WILLIAM/CAROL HARRIS — MOTION TO COMPEL ABANDONMENT
8-2-15 [14]

Final ruling:

This is the debtors' motion to compel the trustee to abandon certain assets of the estate. The motion will be denied for the following reasons: (1) the moving parties gave only 24 days' notice of the hearing rather than 28 days', as required for a notice of hearing such as the one the moving parties served, which purports to require the filing of written opposition in advance of the hearing (see LBR 9014-1(f)(1)); (2) the notice of hearing incorrectly states that written objections must be filed and served no later than 14 days from the date of the notice of hearing, rather than at least 14 days preceding the date of the hearing, as required by LBR 9014-1(f)(1)(B); and (3) the moving parties failed to serve the only creditor that has filed a proof of claim in this case at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g). The proof of claim was filed well in advance of the date this motion was served.

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