**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

**October 5, 2016 at 10:00 a.m.**

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**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. 16-25700-D-7 DAVID SHEVEY — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
8-29-16 [5]

2. 15-00203-D-0 RCH-1 OPUS WEST CORPORATION — MOTION FOR JUDGMENT DEBTOR EXAMINATION
9-2-16 [4]

**CASE CLOSED: 12/07/2015**

3. 11-39615-D-7 TERI HOGLUND
BHS-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TERI LYN HOGLUND AND/OR MOTION TO PAY
9-1-16 [40]

**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.**

4. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC.
DMC-25

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MICHAEL AND DORIS SOLOMON, ET AL. AND/OR MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIAMOND MCCARTHY, LLP FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL
9-7-16 [917]

**Final ruling:**

**The matter is resolved without oral argument. There is no timely opposition to the Chapter 11 Trustee and Diamond McCarthy LLP's motion and application for approval of (I) settlements with Michael T. Solomon and Doris Solomon, the Russell & Doris Solomon, 1994 Trust, Alfredo Burlando, and Daniel E. Wilcoxen; and (II) earned contingency fee from the related settlements (the "motion"), 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. Special Counsel's fee request is consistent with the court's employment order. Accordingly, the motion is granted and the compromise approved and Special Counsel's fees are approved. The moving party is to submit an appropriate order. No appearance is necessary.**

5. 16-25425-D-7 ANNABEL HARO
DBJ-1

MOTION TO AVOID LIEN OF SIERRA CENTRAL CREDIT UNION
9-1-16 [10]

**Tentative ruling:**

**This is the debtor's motion to avoid a judicial lien held by Sierra Central Credit Union ("Sierra Central"). Sierra Central has filed opposition and the debtor has filed a reply. For the following reasons, the court intends either to grant the motion in part or to continue the hearing to permit Sierra Central to supplement the record.**

For a judicial lien to be avoidable, it must impair an exemption to which the debtor would otherwise be entitled. § 522(f)(1) of the Bankruptcy Code; In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). To determine whether a lien impairs an exemption, the court applies the formula set forth in § 522(f)(2)(A) and first adds the amounts of the judicial lien, here $13,244, unavoidable liens, here $201,898, and the debtor's exemption, $75,000, to arrive at a total of $290,142. A judicial lien is considered to impair an exemption only to the extent that this total exceeds the value the debtor's interest in the property would have in the absence of any liens; in this case, that value, according to the debtor, is $285,000. The total of the judicial lien, unavoidable liens, and the debtor's exemption, $290,142, exceeds that value, $285,000, by $5,142. Thus, the judicial lien may be avoided to the extent of, at most, $5,142. The balance of the lien, $8,102, may not be avoided. Viewed another way, deducting the amount of the unavoidable lien, $201,898, and the amount of the debtor's exemption, $75,000, from the alleged value of the property, $285,000, leaves $8,102 in equity to secure Sierra Central's judicial lien.

The debtor did not recognize or apply this formula in her moving papers; instead, she sought "an order avoiding and canceling the lien." The only evidence in support of the motion was a copy of the abstract of judgment, filed as an exhibit, and the declaration of the debtor's attorney, who purported to testify that (1) the debtor claimed a $75,000 exemption in the property and no one objected; (2) on the given dates, Sierra Central obtained a judgment and recorded an abstract of judgment; and (3) "Sierra Central Credit Union was listed on the debtor's schedules of creditors" and "[t]he lien on Debtor's property remains and impairs the homestead exemption therein." D. Jacobs Decl., DN 12, at 2:5-6. When Sierra Central filed opposition, however, challenging the debtor's valuation of the property, the debtor filed a reply that recognizes that "there is only $8,102 worth of equity in the property to support the lien of Sierra Central. It [the lien] should therefore be reduced to such amount." Debtor's Reply, DN 22, at 2:8-10. The debtor's original moving papers notwithstanding, it is clear the judicial lien can be avoided to the extent of $5,142 at most.

Sierra Central, however, has submitted a declaration of its Bankruptcy Repossession Legal Specialist and a printout of the zillow.com search she performed, showing the estimated value of the property as $346,750. At that value, the property would have more than enough equity to fully secure the judicial lien and the motion would have to be denied. In reply, the debtor challenges zillow searches as "inherently suspect" (Reply at 1:26) and submits for the first time, a declaration of real estate broker Tom Russo and what he calls a Comparative Market Analysis, consisting of copies of three printouts, presumably from the Multiple Listing Service, although the court cannot be sure, for properties other than the debtor's - one for an active listing and two for closed sales. The first page of the comparative market analysis includes handwritten notations about the need for a new roof and new carpet throughout, as well as the notation "Pest & repairs?" Mr. Russo testifies "[t]he property has significate [sic] repairs needed" and "[t]he roof and carpet are both in need of replacement." T. Russo Decl., DN 23, at 2:5-6. He does not state he inspected the property himself. Mr. Russo concludes, "In my estimation, as can be seen by Exhibit A [the comparative market analysis], I think the current market value of the property is $267,000 - $285,000." Id. at 2:7-8.

Although the evidentiary record on this motion did not close until the time the debtor filed her reply (LBR 9014-1(f)(1)(C)), the debtor should have submitted this evidence with the motion. LBR 9014-1(d)(7). On the other hand, the court cannot

**accept the zillow printout as evidence of value. See Debilio v. Golden (In re Debilio), 2014 Bankr. LEXIS 3886, *19 (9th Cir. BAP 2014) ["zillow, however, does not constitute credible evidence of value"], citing In re Phillips, 491 B.R. 255, 260, n.7 (citation omitted) ["Zillow 'zestimates' are 'inherently unreliable'" and "are not admissible as a compilation [under] Fed. R. Evid. 803(17)."]; see also In re Cocreham, 2013 Bankr. LEXIS 3537, *8-9 (Bankr. E.D. Cal. 2013) [same]. As the debtor has now had two opportunities to present evidence in support of the motion – with the motion and with the reply, and as Sierra Central was not afforded the opportunity to counter the debtor's evidence when it was finally filed, the court will continue the hearing at Sierra Central's request to permit it to supplement the record as to the value of the property. If Sierra Central does not wish to do so, the court will grant the motion in part and avoid the lien to the extent of $5,142, with the balance, $8,102, remaining unaffected.**

**The court will hear the matter.**

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| 6. | 16-23638-D-7<br>DMW-2 | MICHAEL NICHOLS | MOTION TO SELL<br>9-2-16 [21] |
| 7. | 13-21855-D-7<br>HWW-3 | PATRICIA WILLIAMS | MOTION TO RECONVERT CASE TO CHAPTER 13<br>9-7-16 [75] |

8. 16-24259-D-7 MKJ-1 — ROBERT MANRIQUEZ — MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A. 8-26-16 [20]

**Final ruling:**

**This is the debtor's motion to avoid a judicial lien held by FIA Card Services, N.A. ("FIA"). The motion will be denied because the moving party failed to serve FIA or its successor in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served FIA by "U.S. Mail," therefore presumably by first-class mail, at a post office box address with no attention line, and served Bank of America, also by "U.S. Mail," at two different post office box addresses, again with no attention line. The moving party also served the attorney who obtained FIA's abstract of judgment. Such service on FIA and Bank of America was insufficient for two reasons. FIA was an FDIC-insured institution and is no longer doing business under that name. Its successor institution is Bank of America, N.A., also an FDIC-insured institution. As such, both were required to be served by certified mail to the attention of an officer (Fed. R. Bankr. P. 7004(h)), whereas here, they were served by first-class mail with no attention line. Service on the attorney who obtained the abstract of judgment was insufficient as there is no evidence that attorney is authorized to receive service of process on behalf of FIA or Bank of America 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).**

**In addition, the proof of service is not signed under oath as to the facts of service, as required by 28 U.S.C. 1746, but only as to the declarant's age and citizenship.**

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

9. 16-24259-D-7 MKJ-2 — ROBERT MANRIQUEZ — MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A. 8-26-16 [15]

**Final ruling:**

**This is the debtor's motion to avoid a judicial lien held by FIA Card Services, N.A. ("FIA"). The motion will be denied because the moving party failed to serve FIA or its successor in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served FIA by "U.S. Mail," therefore presumably by first-class mail, at a post office box address with no attention line, and served Bank of America, also by "U.S. Mail," at two different post office box addresses, again with no attention line. The moving party also served the attorney who obtained FIA's abstract of judgment. Such service on FIA and Bank of America was insufficient for two reasons. FIA was an FDIC-insured institution and is no longer doing business under that name. Its successor institution is Bank of America, N.A., also an FDIC-insured institution. As such, both were required to be served by certified mail to the attention of an officer (Fed. R. Bankr. P. 7004(h)), whereas here, they were served by first-class mail with no attention line. Service on the attorney who obtained the abstract of judgment**

**was insufficient as there is no evidence that attorney is authorized to receive service of process on behalf of FIA or Bank of America 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).**

**In addition, the proof of service is not signed under oath as to the facts of service, as required by 28 U.S.C. 1746, but only as to the declarant's age and citizenship.**

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

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| 10. | 14-20064-D-7<br>WR-75 | GLENN GREGO | OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 12<br>8-9-16 [642] |

**Tentative ruling:**

**This is the debtor's renewed objection to the claim of the Internal Revenue Service (the "IRS"). The IRS has filed opposition. For the following reasons, the objection will be overruled. In addition, the court will issue an amended minute order to correct an error in the order on the debtor's original claim objection.**

**As a preliminary matter, because the debtor will not receive a discharge in this case, he has standing to object to the claim. See Wellman v. Ziino (In re Wellman), 2007 Bankr. LEXIS 4291, *5 n.5 (9th Cir. BAP 2007).**

**The debtor objects to the claim on the grounds that (1) the proof of claim was not timely filed; and (2) as a result of his filing of amended returns for 2009, 2010, and 2011 and his filing of returns for 2012 and 2013, the debtor owes nothing to the IRS. The debtor made both of these arguments in his original objection to the IRS's claim. Thus, the IRS takes the position the debtor is precluded by the doctrine of law of the case from raising them again.**

**The court need not determine whether law of the case applies here because the debtor has presented nothing he did not present in his original objection to the claim; he has not demonstrated the court committed clear error or the original decision was manifestly unjust; and he has not shown there has been an intervening change in controlling law. Therefore, reconsideration is not appropriate (see Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)), and the court will overrule the objection.[1]**

**There is an error in the record, however, that needs to be corrected. Neither party refers to it, although the IRS alludes to it when it states that "the unsecured components of the POC are entitled to receive distributions from the estate." IRS's Opp., DN 655, at 3:13-14. The issue is one of the timeliness of the proof of claim, as regards the secured versus the unsecured (priority and general) portions of the claim. The court addressed this issue in its final ruling on the debtor's original claim objection, holding that the secured portion of the claim would be disallowed pursuant to § 502(b)(9) of the Code.**

**When the minute order on that ruling was filed, it inadvertently stated simply**

**that the objection was overruled. It should have stated the objection was sustained in part and the secured portion of the IRS's claim is disallowed. The court will issue an amended minute order, amending its minute order filed November 20, 2015, on the court's docket as DN 558.**

**The court will hear the matter.**

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**1 The court does not rule out the possibility that the law of the case doctrine does apply; the court simply finds this particular matter more easily disposed of by application of the law on reconsideration.**

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| 11. | 16-25064-D-7 | JEFFREY GERLACH | AMENDED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE<br>8-15-16 [23] |

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| 12. | 16-25064-D-7<br>EAT-1<br>NATIONSTAR MORTGAGE, LLC VS. | JEFFREY GERLACH | MOTION FOR RELIEF FROM AUTOMATIC STAY<br>9-1-16 [36] |

**Final ruling:**

**This matter is resolved without oral argument. This is Nationstar Mortgage, 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.**

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| 13. | 16-23378-D-7<br>16-2139<br>TRAVIS CREDIT UNION V. GUTIERREZ | LUIS GUTIERREZ | MOTION FOR ENTRY OF DEFAULT JUDGMENT<br>8-29-16 [9] |

14. 14-31685-D-7 CATHERINE PALPAL-LATOC — MOTION FOR COMPENSATION FOR
ASF-3 — ALAN S. FUKUSHIMA, CHAPTER 7 TRUSTEE
9-6-16 [220]

**Tentative ruling:**

**This is the trustee's application for compensation in this case. No opposition has been filed; however, the court has one concern. The name and address of the debtor's attorney, Peter Macaluso, are crossed out on the proof of service, with the word "Exclude" above them. Thus, the debtor's attorney was not served. The court will continue the hearing to permit the trustee to serve the debtor's attorney. The court will hear the matter.**

15. 15-29890-D-7 GRAIL SEMICONDUCTOR — MOTION FOR ADMINISTRATIVE EXPENSES
DNL-9 — 9-8-16 [506]

16. 15-29890-D-7 GRAIL SEMICONDUCTOR — MOTION TO DISMISS ADVERSARY PROCEEDING
16-2088 MRH-1 — 8-26-16 [104]
CARELLO V. STERN ET AL

**Tentative ruling:**

**This is the motion of defendant The Hongkong and Shanghai Banking Corporation Limited (the "Bank") to dismiss the complaint of the plaintiff, Sheri Carello, who is also the trustee in the chapter 7 case in which this adversary proceeding is pending (the "trustee"), for lack of personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(2), made applicable in this proceeding by Fed. R. Bankr. P. 7012(b). The trustee has filed opposition and the Bank has filed a reply. For the following reasons, the motion will be granted in part and the hearing will be continued to permit the trustee to take discovery limited to matters that might support the exercise of general personal jurisdiction over the Bank.**

**The Bank contends this court lacks personal jurisdiction over it because (1) it lacks the minimum contacts with the State of California or with the United States to establish general personal jurisdiction in this court; and (2) the trustee's particular claims against the Bank do not meet the applicable standards required to establish specific jurisdiction over the Bank. The trustee contests both points; she also relies heavily on the theory that, because of this court's in rem jurisdiction over the funds at issue in this proceeding, "personal jurisdiction is not necessary for the Court to hear this matter." Trustee's Opp., DN 117, at 2:10. The court will begin with the latter proposition.**

I. In Rem Jurisdiction

This action concerns over $2.5 million in funds that were wire-transferred pre-petition into the account of a Hong Kong corporation with the Bank. As against the Bank, the trustee asserts a claim for turnover of the funds, under § 542(a) of the Bankruptcy Code. Specifically, she seeks "a judgment against [the Bank] compelling an under oath accounting and turnover of the Transferred Funds or the proceeds thereof pursuant to 11 U.S.C. § 542(a)." Trustee's First Amended Complaint, DN 22, at ¶ 44. The trustee contends the funds were property of the debtor as of the commencement of the case and are now property of the estate, and thus, are subject to this court's exclusive jurisdiction under 28 U.S.C. § 1334(e). The Bank does not appear to contest this court's in rem jurisdiction over the funds. It does, however, challenge the trustee's conclusion that personal jurisdiction is not necessary for the trustee to maintain this action as against the Bank.

The court agrees with the Bank on this point. In particular, the trustee "incorrectly conflates in rem jurisdiction over physical assets with personal jurisdiction over [the Bank]." Bank's Reply, DN 121, at 2:6-7. Although the analysis of the two types of jurisdiction can overlap (see, e.g., Shaffer v. Heitner, 433 U.S. 186, 207-08 (1977)), a court's in rem jurisdiction over property does not by itself give the court personal jurisdiction over a person or entity that owns the property (let alone an entity that, like the Bank, is merely in possession of it) or eliminate the requirement of personal jurisdiction over that person or entity. In Shaffer v. Heitner, the United States Supreme Court held that "in order to justify an exercise of jurisdiction in rem, the basis for jurisdiction must be sufficient to justify exercising 'jurisdiction over the interests of persons in a thing.' [fn] The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum-contacts standard elucidated in International Shoe." 433 U.S. at 207, citing International Shoe Co. v. Washington, 326 U.S. 310 (1945). See also SEC v. Ross, 504 F.3d 1130, 1139, n.9 (9th Cir. 2007), citing Shaffer ["Exercising in rem jurisdiction would have served to give notice to Bustos, but it would not have given the court in personam jurisdiction over him."]; Viking Offshore (USA), Inc. v. Bodewes Winches, B.V. (In re Viking Offshore (USA), Inc., 405 B.R. 434 (Bankr. S.D. Tex. 2008) (citation omitted) ["[W]hile the court has power to protect the res before the court, any injunction entered against an entity is an in personam action that may be enforced against entities only over which the court has personal jurisdiction."].

The cases cited by the trustee do not persuade the court otherwise. First, the trustee cites Shaffer, 433 U.S. at 199, and Hanson v. Denckla, 357 U.S. 235, 244-46 (1958), for the proposition that "[i]n rem jurisdiction allows a bankruptcy court to adjudicate interests of particular persons and entities in designated property absent personal jurisdiction." Trustee's Opp. at 6:16-17. Neither decision mentioned bankruptcy and, as already seen, the holding of Shaffer was essentially the opposite of the proposition posited by the trustee. Nor does Hanson support the trustee's position. The Hanson court found that the trial court that issued the judgment on appeal had neither in rem nor in personam jurisdiction. 357 U.S. at 249, 251. The decision did not deal with the propriety of in rem jurisdiction without personal jurisdiction.

The trustee also cites Kismet Acquisition, LLC v. Icenhower (In re Icenhower), 757 F.3d 1044 (9th Cir. 2014), in which the issue was the exercise by a United States bankruptcy court of jurisdiction over land in Mexico. The defendants did not challenge the court's personal jurisdiction over them and the decision does not

concern personal jurisdiction at all. Finally, the trustee cites Lykes Bros. S.S. Co. v. Hanseatic Marine Serv. (In re Lykes Bros. S.S. Co.), 207 B.R. 282 (Bankr. M.D. Fla. 1997). In that case, the court found that one of the defendants had consented to the court's personal jurisdiction over it by filing a proof of claim (207 B.R. at 285-86), and that a second defendant had "minimum contacts with the United States through transacting business and doing acts in the United States." Id. at 286.

The third defendant was a German company created post-petition for the purpose of taking by confidential assignment the other two defendants' claims against the debtor and causing the new company to seize, post-petition, one of the debtor's shipping vessels, an act the court found to have been taken in violation of the automatic stay. See id. at 285. As to its jurisdiction over the German company, the court began with this: "While nothing in the record warrants the conclusion that Hanseatic is subject to the personal jurisdiction of this Court, it cannot be gainsaid that this Court's jurisdiction under 28 U.S.C. § 1334(d) grants this Court jurisdiction over all property of the estate wheresoever located." 207 B.R. at 287. However, the court went on to make these findings:

> First, in effecting the arrest of the [vessel] in apparently knowing contravention of the automatic stay, Hanseatic has taken an action that it clearly knew [or] reasonably should have foreseen would have an effect in the United States. The clear intent of the seizure was to compel payment by a Chapter 11 debtor of the assigned claims. The actions clearly have effect in the United States inasmuch as they disrupt the Debtor's business with customers around the globe and also disrupt this Court's administration of this estate. The action also clearly affects the commerce of the United States and its citizens. Hanseatic knew or reasonably should have known that its conduct in seizing the [vessel] would have an effect in the United States. Consequently, this Court finds that the exercise of jurisdiction over Hanseatic does not violate traditional notions of fair play and substantial justice.

Id. at 287-88.

The court did not mention the two different types of personal jurisdiction – general and specific, but it appears the court in fact made that distinction when it found, first, that "nothing in the record warrants the conclusion that Hanseatic is subject to the personal jurisdiction of this Court," but second, that Hanseatic took the specific acts that were the subject of the debtor's claims with knowledge they would have an effect in the United States. In other words, in this court's view, the Lykes Bros. S.S. Co. court found it did not have general personal jurisdiction over Hanseatic but did have specific personal jurisdiction over it.

The court finds that, given the circumstances in the case, Lykes Bros. S.S. Co. does not support the proposition that where a court has in rem jurisdiction over property, it need not also have personal jurisdiction over the defendant who owns or has possession of that property. Further, the circumstances in that case were a far cry from those in this case, where the Bank, pre-petition, did nothing but accept the deposit by an entity in the United States [1] to the bank account of a Hong Kong corporation. In short, the trustee's position is contrary to Shaffer and to deny the motion, the court must find it has personal jurisdiction over the Bank, either general or specific. The court's in rem jurisdiction over the funds is not sufficient to maintain the action as against the Bank.

## II. Personal Jurisdiction

"For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least 'minimum contacts' with the relevant forum such that the exercise of jurisdiction 'does not offend traditional notions of fair play and substantial justice.'" Dole Food Co. v. Watts, 303 F.3d 1104, 1110-11 (9th Cir. 2002), citing International Shoe, 326 U.S. at 316. "Where a federal statute such as [the Securities Exchange Act] confers nationwide service of process, the question becomes whether the party has sufficient contacts with the United States, not any particular state." Securities Investor Protection Corp. v. Vigman, 764 F.2d 1309, 1315 (9th Cir. 1985). Thus, in bankruptcy cases, because Fed. R. Bankr. P. 7004(d) authorizes nationwide service of process, the question is one of minimum contacts with the United States, rather than any particular state. See Goodson v. Rowland (In re Pintlar Corp.), 133 F.3d 1141, 1146-47 (9th Cir. 1997); Owens-Illinois, Inc. v. Rapid Am. Corp. (In re Celotex Corp.), 124 F.3d 619, 630 (4th Cir. 1997); Diamond Mortg. Corp. v. Sugar, 913 F.2d 1233, 1244 (7th Cir. 1990).

### A. Personal Jurisdiction - Specific

Depending on the nature and extent of the non-resident defendant's contacts with the forum, in this case, the United States, the court may have general or specific jurisdiction over him. Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1123 (9th Cir. 2002). Specific jurisdiction depends on the defendant's contacts with the forum with specific reference to the plaintiff's claims against him. That is, "[a] court exercises specific jurisdiction where the cause of action arises out of or has a substantial connection to the defendant's contacts with the forum." Id. (citation added; emphasis added). That is, "the defendant's suit-related conduct must create a substantial connection with the forum State." Walden v. Fiore, 134 S. Ct. 1115, 1121 (2014).

The Ninth Circuit has established a three-prong test for determining whether a court has specific personal jurisdiction:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (2004). The plaintiff has the burden of proof as to the first two factors; if he satisfies that burden as to both, the burden shifts to the defendant to demonstrate it would not be reasonable for the court to exercise personal jurisdiction over it. Id. The first prong of the analysis breaks down into two parts - "purposeful direction" and "purposeful availment." Id. For a finding of "purposeful direction," the defendant must allegedly have "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." Id. at 803 (citations omitted).

Certain overriding principles also inform the analysis. "First, the relationship must arise out of contacts that the 'defendant himself' creates with the forum State. Due process limits on the State's adjudicative authority

principally protect the liberty of the nonresident defendant — not the convenience of plaintiffs or third parties." Walden, 134 S. Ct. at 1122 (citation omitted). In addition, the "analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." Id. (citation omitted). And as part of this latter test, "the plaintiff cannot be the only link between the defendant and the forum." Id.

The trustee's makes a single argument for the first and second prongs of the Ninth Circuit's test - the propositions that (1) the Bank purposefully directed its activities toward the United States or purposefully availed itself of the privileges of conducting activities in the United States; and (2) the trustee's claim arises out of or relates to the Bank's forum-related activities. The trustee contends:

> [the Bank] intentionally retained and failed to remit the Wired Funds in its possession, custody, or control despite the Trustee's turnover demand. Consequently, these actions are expressly aimed at the United States in that the bankruptcy estate has an interest in the Wired Funds, and once notified of the bankruptcy case and the estate's interest, [the Bank] knew its actions would cause harm in the United States.

Trustee's Opp. at 9:23-27. There is no suggestion here the Bank purposefully availed itself of the privilege of conducting activities in the United States, thereby invoking the benefits and protections of its laws. The court will therefore assume the trustee intends a "purposeful direction" analysis. Under either analysis, however, the argument breaks down for several reasons.

First, it fails to satisfy the underlying principles reiterated in Walden: that the minimum contacts must be ones "the defendant himself" creates with the forum; that the contacts must be with the forum itself, not with persons who reside there; and that the plaintiff cannot be the only link between the defendant and the forum. See Walden, 134 S. Ct. at 1122. In these respects, the trustee's argument is reminiscent of the plaintiffs' argument in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) - that a non-resident car dealer and its non-resident wholesale distributor could be sued in Oklahoma simply because the plaintiffs, who had purchased a car from the dealer in New York, were harmed when the car was involved in an accident while the plaintiffs were driving through Oklahoma. The court held that the "one isolated occurrence"; namely, "the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma" was insufficient to support personal jurisdiction over the dealer and distributor. 444 U.S. at 295.

The due process clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." Id. at 297. Thus, whereas a car dealer who markets his cars in a particular state would reasonably expect to be subject to suit in that state on account of accidents occurring there and may take precautions to protect himself, such as by procuring insurance, where the dealer does not market its vehicles in that state, although it is foreseeable a purchaser might drive the vehicle into that state, "the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.'" Id. at 298. Similarly, here, the trustee would base personal jurisdiction over the Bank solely on her own demand on the Bank for turnover and the Bank's refusal to comply.

Further, as the Bank suggests, if merely refusing to consent to the plaintiff's

demands in or prior to the filing of a lawsuit were sufficient, every demand or complaint made or filed by a plaintiff would automatically confer jurisdiction. Thus, if the trustee were correct, any bank anywhere in the world would, merely by accepting a deposit from a customer, would put itself in the position of either having to relinquish the funds to someone other than its customer on demand or be deemed to be subject to the personal jurisdiction of that person's chosen forum. In the bankruptcy context, a bankruptcy trustee or debtor-in-possession would need only allege a person or entity anywhere in the world is in possession of estate property and the defendant would have to either hand over the goods on the plaintiff's demand or subject himself to the personal jurisdiction of a United States bankruptcy court. In other words, a defendant in a turnover action would have to himself grant the plaintiff the relief the plaintiff is seeking from the court. The defendant would subject himself to being "haled into court" in the United States simply by being haled into court,[2] a result that would simply eviscerate the protections of the due process clause. In short, in the court's view, the "minimum contacts" must have been made before the lawsuit is filed and they must be contacts other than the plaintiff's unilateral demand and the defendant's refusal to comply.[3]

The trustee cites Viking Offshore (USA), Inc. v. Bodewes Winches, B.V. (In re Viking Offshore (USA), Inc., 405 B.R. 434 (Bankr. S.D. Tex. 2008), which at first glance appears to support the trustee's position. In that case, a chapter 11 debtor asserted certain winches were property of the estate and also asserted the Netherlands company from which the debtor claimed to have purchased the winches had sold its assets to a new Netherlands company in a bankruptcy proceeding in the Netherlands. The debtor sought turnover of the winches in its chapter 11 case in the Texas bankruptcy court and the court found it had specific personal jurisdiction over the new company.

> This court believes that Debtors' complaint, although governed by Section 542 of the Bankruptcy Code, asserts a cause of action in the nature of the intentional tort of conversion. The court thus concludes that, to the extent New Bodewes asserts an interest in the winches, and retains possession of the winches, New Bodewes' contacts with the United States are sufficient to support an exercise of specific personal jurisdiction. [fn]

405 B.R. at 440.

The decision is not binding on this court and appears to this court to overlook the Shaffer holding in that the Viking Offshore court based its conclusion primarily on the bankruptcy court's exclusive in rem jurisdiction over property of the estate, under 28 U.S.C. § 1334(e) (see Viking Offshore, 405 B.R. at 439, 440, n.2), and also appears to overlook the fundamental principles emphasized in Walden. In any event, as the Bank points out, the decision is distinguishable in that it was based on the court's interpretation of the plaintiff's complaint as stating a claim for conversion, a claim that is absent in the present case.

The trustee also cites In re Chiles Power Supply Co., 264 B.R. 533 (Bankr. W.D. Mo. 2001), in which the court also relied heavily on its in rem jurisdiction over property of the estate and found it had personal jurisdiction to enjoin Canadian defendants from pursuing litigation in Canada the court found would violate the provisions of a confirmed chapter 11 plan. 264 B.R. at 543. The court's minimum contacts analysis did not include the Shaffer decision or the principles later reiterated in Walden. Instead, the court held it "need only find that the Defendants performed an act in Canada that has an effect on [the debtor] in the

United States in order to find that the Defendants are personally subject to the jurisdiction of this Court. I so find." Id. Neither of these cases persuades the court that a non-resident defendant's refusal to turn over to a bankruptcy trustee what is allegedly property of the estate is, by itself, sufficient to confer specific personal jurisdiction over the defendant.

B. Personal Jurisdiction - General

"[A] defendant whose contacts are substantial, continuous, and systematic is subject to a court's general jurisdiction even if the suit concerns matters not arising out of his contacts with the forum." Glencore Grain Rotterdam, 284 F.3d at 1123. "The standard for establishing general jurisdiction is fairly high, and requires that the defendant's contacts be of the sort that approximate physical presence." Bancroft & Masters, Inc. v. Augusta Nat'l Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). The trustee does not contend at this stage that the court has general personal jurisdiction over the Bank, but instead, seeks to take discovery to support the theory. The Bank vigorously opposes the request.

A bankruptcy court has the authority to determine whether it has jurisdiction and authority to "allow or order discovery to aid in determining whether it has jurisdiction." In re Visioneering Constr., 661 F.2d 119, 122 (9th Cir. 1981). Discovery is appropriate "where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." Data Disc, Inc. v. Systems Technology Associates, Inc., 557 F.2d 1280, 1285, n.1 (9th Cir. 1977). However, "[w]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by defendants, the Court need not permit even limited discovery . . . ." Terracom v. Valley Nat'l Bank, 49 F.3d 555, 562 (9th Cir. 1995).

The Bank contends the trustee has submitted no evidence to contradict the Bank's evidence as to its lack of minimum contacts with the United States; thus, the pertinent facts are not controverted. The court finds, however, that a more satisfactory showing of the facts is necessary. In support of its motion, the Bank submitted the declaration of Phoebe Lo, Senior Legal Counsel in the Bank's legal department. She testifies that "[a]ll accounts of [Bank] customers are maintained and serviced out[side] of the United States" and that "[a]ll funds of [Bank] customers deposited into [Bank] accounts are maintained and serviced out[side] of the United States." P. Lo Decl., DN 106, ¶¶ 4, 5. She then, however, directs a large number of statements not to the United States but to the State of California. Thus, she testifies the Bank maintains no branches, has no employees, owns no property, leases no property, solicits no business, does not advertise, is not qualified to transact banking business, and does not maintain any bank accounts in the State of California. She does not testify to any of these factors with respect to the United States as a whole or with respect to any state other than California, despite the fact that the Bank acknowledges in its motion that the relevant question in bankruptcy adversary proceedings is whether the defendant has "nationwide minimum contacts." Bank's Memo., DN 107, at 5:14-16.

In the court's view, the absence of testimony by Ms. Lo as to branches, employees, property owned or leased, business solicited, advertisement in, transacting business in, and maintaining bank accounts in any state in the United States, as opposed to California only is a noticeable omission, certainly one that raises sufficient questions to permit the trustee to conduct discovery. The court also views as ambiguous Ms. Lo's testimony that "[the Bank] primarily focuses its business on customers doing business in Asia Pacific" and that "[the bank] does not

focus its business on customers doing business in the United States generally or California specifically." P. Lo. Decl. at ¶ 16. The court's concern here is with the phrase "in the United States generally." Does Ms. Lo mean customers doing business all over the United States or customers doing business in any particular state? Based on the authorities cited above, the question is whether the Bank has minimum contacts with any state in the United States, not just with all of the states "generally." Given this ambiguity and Ms. Lo's direct limitation of much of her testimony to California, the court finds there are "pertinent facts bearing on the question of jurisdiction [that] are controverted" and that "a more satisfactory showing of the facts is necessary," such that jurisdictional discovery is warranted.

The court recognizes the Bank takes the position that, because the burden of proof is on the trustee, who has not offered any evidence contrary to the Bank's, there is no basis to allow discovery. According to the Bank, the trustee "incorrectly assert[s] that such discovery is warranted because [the Bank] did not meet a nonexistent burden to conclusively prove the negative statement that [the Bank] lacks sufficient minimum contacts to convey general jurisdiction." Bank's Reply, DN 121, at 2:16-18. However, although the burden of showing minimum contacts is on the trustee, the Bank opened the door by submitting Ms. Lo's declaration, a declaration that is obviously self-serving and that, in the court's view, is on its face simply more constrictive than it should have been to permit the court to assess whether the Bank has the requisite minimum contacts with the relevant forum, which is the United States.

As for the Bank's relationship with HSBC Bank USA, N.A. ("HSBC Bank USA"), the court is not inclined to allow discovery. Ms. Lo testified in support of the motion that the Bank maintains a correspondent bank account in New York at HSBC Bank USA. That relationship alone does not satisfy the minimum contacts test for personal jurisdiction. See Hill v. HSBC Bank PLC, 2016 U.S. Dist. LEXIS 125921, *11-12 (S.D.N.Y. Sept. 15, 2016). The trustee notes that the Bank and HSBC Bank USA are indirectly owned by the same parent company, such that, as discovered by the trustee, the Bank reported as "material" in its Interim Report 2016 the existence of a consent order between HSBC Bank USA and the Office of the Comptroller of the Currency and a deferred prosecution agreement between HSBC Bank USA and both banks' common parent, on the one hand, and the U.S. Department of Justice, on the other hand. The Bank points out that another bankruptcy court has recently found to be "frivolous" a chapter 11 debtor's reliance on a similar agreement as support for a finding of personal jurisdiction over the Bank. See Hackman v. Wilson (In re Hackman), 534 B.R. 867, 874 (Bankr. E.D. Va. 2015). The court also held the debtor had failed to show the Bank had "purposefully available itself of doing business in the United States." Id.

It appears to the court the trustee would need to make a showing that the Bank is the alter ego of HSBC Bank USA before the court would be in a position to exercise jurisdiction over the Bank based on that connection. See GEC US 1 LLC v. Frontier Renewables, LLC, 2016 U.S. Dist. LEXIS 120931, *39-41 (N.D. Cal. Sept. 7, 2016). Based on what the court has seen thus far, it appears unlikely she would be able to do so, and as such, the court will not permit discovery on this issue.

For the reasons stated, the court intends to grant the motion in part. The court finds that its in rem jurisdiction over the funds transferred to the Bank is insufficient to permit the trustee to maintain this action as against the Bank absent personal jurisdiction over the Bank and that the court does not have specific personal jurisdiction over the Bank. The court is prepared to permit the trustee to conduct limited discovery on the issue of whether the court has general personal

**jurisdiction over the Bank. The court will hear the matter.**

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**1 According to the trustee, the wire transfer was made by the debtor's then counsel. See Opp. at 4:10.**

**2 "The defendant's conduct and connection with the forum State must be such that the defendant should reasonably anticipate being haled into court there." Sher v. Johnson, 911 F.2d 1357, 1361 (9th Cir. 1990), citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (internal quotation marks omitted).**

**3 The trustee makes the same argument as to the second prong of the test – that her claim arises out of or is related to the Bank's forum-related activities. She asks, "but for [the Bank's] contacts with the United States, would the Trustee's claims against [the Bank] have arisen?" Trustee's Opp. at 10:10-11. "The answer must be in the negative. If [the Bank] had not retained . . . and failed to remit the Wired Funds, the Trustee would have no claims against [the Bank] . . . ." Id. at 10:12-14. The same argument was rejected out of hand in Carpenters Health & Sec. Trust of W. Washington v. Paramount Scaffold, Inc., 2014 U.S. Dist. LEXIS 128257, *8-9 (W.D. Wash. 2014), in which employee trust funds sued a company's principals for conversion of funds withheld from employee paychecks and required to be paid to the trust funds. As to the second prong of the specific jurisdiction test, the court held, "Assuming the truth of Plaintiffs' allegations of conversion, the claims against the Johnsons would remain regardless of any alleged contacts with Washington. The alleged failure to remit funds to the required Trusts is not dependent upon Washington as the forum state." Similarly, here, the plaintiff happens to be a bankruptcy trustee in the United States. That is the only connection between the claim against the Bank and the United States. In other words, the trustee's claim does not depend on the Bank's connection with the United States, but on the trustee's.**

17. 16-22432-D-7 MAUREEN BLACK

AMENDED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
9-12-16 [30]

18. 16-25239-D-7 DAO-2 — DIVINDER HUNDAL — MOTION TO COMPEL ABANDONMENT 9-21-16 [21]

19. 10-35944-D-7 RAH-5 — DARA MINOIEFAR AND RAMOUNA MINOOEIFAR — MOTION TO AVOID LIEN OF CSW/STUBER-STROEH ENGINEERING GROUP, INC. 9-21-16 [113]

**Tentative ruling:**

**This is the debtors' second attempt to avoid a judicial lien previously held by CSW/Stuber-Stroeh Engineering Group, Inc. ("CSW") against real property the debtors owned when they filed their petition commencing this case, on June 17, 2010, which property they have since lost to foreclosure.[1] The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has a preliminary concern.**

**With their prior motion, the debtors failed to provide a copy of a recorded abstract of judgment, and thus, failed to demonstrate CSW had a lien to begin with. They also failed to show the amounts of unavoidable liens against the property so the court was unable to apply the § 522(f)(2)(A) formula. With this motion, the debtors have resolved both of those problems. However, they still have not claimed any exemption in the property; thus, they have not satisfied the second test for avoidance of a judicial lien – that they have claimed an interest in the property as exempt. See Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). The motion states the debtors were entitled to claim an exemption in the property under Cal. Code Civ. Proc. § 703.140(b)(5), and the court's review of the debtors' Schedule C indicates that is likely the case. However, they have not done so.**

**The court will require the debtors to actually claim an exemption in the property, either in the amount of the unused portion of the § 703.140(b)(5) exemption, $17,150, as they indicate in their motion, or in some nominal amount, since there was virtually no equity in the property over and above unavoidable liens at the time the debtors' case was filed (or in some other amount). The court intends to continue the hearing to permit the debtors to file an amended Schedule C to claim an exemption in the property.**

**The court will hear the matter.**

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**1 The motion states that although the debtors no longer have an interest in the property, the recorded abstract of judgment is affecting their credit and preventing them from purchasing a home. If the debtors satisfy the elements necessary to avoid a judicial lien, as discussed below, and assuming no opposition is presented, they will be entitled to avoid the lien despite the fact that they no longer own the property. See Culver, LLC v. Kai-Ming Chiu (In re Kai-Ming Chiu), 304 F.3d 905, 908 (9th Cir.2002).**

20. 14-25148-D-11 HENRY TOSTA
MF-37

MOTION BY MATTHEW J. OLSON TO WITHDRAW AS ATTORNEY
9-16-16 [624]

21. 16-25351-D-7 ALAN TERRY

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-13-16 [37]

**Final ruling:**

**Debtor's amended application for waiver of the Chapter 7 filing fee was granted and the filing fee was waived. As such the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.**

22. 16-20760-D-7 ADA CONSTRUCTION
TF-1 SERVICES, INC.

MOTION FOR APPROVAL OF STIPULATION
9-13-16 [63]

23. 16-23790-D-7 HEATHER DRAKELEY
GW-1

MOTION TO REDEEM
9-9-16 [17]