UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 17, 2018 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.	15-29103-D-7 DNL-5	ROCK RIDGE PROPERTIES, INC.	AMENDED MOTION TO EMPLOY J. RUSSELL CUNNINGHAM AS ATTORNEY(S) 9-18-18 [60]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ J. Russell Cunningham as attorney under a hybrid fee agreement is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

2. 12-22706-D-7 DAVID WHITTINGTON MOTION TO AVOID LIEN OF
RJM-2 BENEFICIAL CALIFORNIA INC
9-7-18 [30]

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, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

3. 18-25811-D-11 JLM ENERGY, INC. STATUS CONFERENCE RE: VOLUNTARY
PETITION
9-13-18 [1]

4. 18-24116-D-7 TERRY/YVONNE HERVEY MOTION FOR RELIEF FROM
MEL-1 AUTOMATIC STAY
U.S. BANK, NATIONAL 9-12-18 [46]
ASSOCIATION VS.

Final ruling:

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

5. 18-23920-D-7 KENNETH/KIMBERELY RUDOLPH MOTION TO COMPEL ABANDONMENT
CLH-1 9-7-18 [14]

Final ruling:

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

6. 18-25323-D-7 LESLIE RAY

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
8-24-18 [2]

7. 18-25528-D-7 STEVEN MESAROS

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-14-18 [11]

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.

8. 17-23837-D-7 FRANCISCO/MARIA PADILLA
PGM-7

MOTION TO COMPEL ABANDONMENT
9-19-18 [209]

Tentative ruling:

This is the debtors' motion to abandon property of the estate consisting of the personal property comprising their business, Susy's Mexican Food, and the real property on which the business is located, at 120 W. Harding Way in Stockton. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court intends to deny the motion because is too confusing to permit potential respondents to determine whether to oppose it or to permit the court to know precisely what it would be approving if it grants the motion. Further, the meeting of creditors in this converted case will not take place until the day before the hearing on this motion. Thus, assuming the trustee has had enough time to evaluate the assets (the motion states he has visited the property), creditors have not had enough time to do so.

The debtors seek an order <u>authorizing</u> the trustee, <u>in his sole discretion</u>, to abandon the real property and the following specified personal property assets of the business: "Susy's"; office furniture, computers, printers, "etc."; fixtures and inventory. In addition, the debtors ask the court to "[a]uthorize the abandonment of a specific Personal Property asset[s] to be effective upon the filing by the Trustee of one or more Notices of Abandonment with the Court, which notices shall detail the specific item(s) of Real and Personal Property to be abandoned." Debtors' Motion, filed Sept. 19, 2018 ("Mot."), at 2:16-20. These procedures are out of the ordinary for debtors wishing to have property of the estate abandoned. A debtor does not ordinarily seek an order authorizing the trustee, in his sole discretion, to abandon property and does not ordinarily seek an order authorizing abandonment effective upon the trustee's filing of a notice of abandonment. (The latter would, apparently, afford no notice to creditors as the abandonment would be

effective upon filing of the notice.) The motion does not identify what items of real or personal property would be included in the abandonment authorized by this procedure.

The debtors' analysis confuses the matter more.

> **Abandonment of the real and Personal Property listed above is an appropriate exercise of the Trustee's business judgment and is in the best interests of the bankruptcy estate. The Estate is protected against loss of value a blanket abandonment of the balance of the Real and Property remaining in the Bankruptcy Estate might cause by allowing the abandonments to become effective only after one or more Notices of Abandonments is filed by the Trustee. The proposed abandonment process will significantly reduce the risk to the Estate that an otherwise valuable item of real or personal property would be accidently abandoned, and allow a sale to payoff significant taxes owed.**
>
> **The Debtors are not seeking at this time to abandon the Excluded Assets because the Excluded Assets have not been adequately inspected by the Trustee for such a request.**

Mot. at 4:11-24. "Excluded Assets" is used here as a defined term, but it has not been defined in the motion. The first sentence of this language suggests the trustee has exercised his business judgment in determining that abandonment of certain assets (presumably the restaurant assets) is in the best interest of the estate. However, if that is the case, why is the trustee to be authorized to abandon those assets "in his sole discretion"? Is the abandonment to occur now or at some future undisclosed and unnoticed time?

Congress has established a mechanism for the abandonment of assets. See Bankruptcy Code § 554(a) and (b). If the debtors bring a proper and clear motion under § 554(b), the court will entertain it. In that event, the debtors should consider the inconsistency inherent in this statement: "As there is no equity for the benefit of the estate, and the debtors' [sic] need to sell the property post-petition to allow for retirement this motion has been filed." Mot. at 2:1-3. The debtors have claimed only a $3,000 exemption in the restaurant. They state that both the personal property used in the business and the real property on which it is located are overencumbered. This begs the question how the debtors are going to sell it and how the sale is going to allow them to retire.

The court will hear the matter.

9. 18-25639-D-7 CLARENCE GREEN
MKM-1

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND/OR MOTION TO WAIVE COMPLETION OF CREDIT COUNSELING
9-11-18 [9]

Tentative ruling:

This is the debtor's motion to waive the credit counseling and personal financial management course requirements. There is a notice problem. The motion gives the hearing date as October 3, 2018 and does not purport to require the filing

of written opposition in advance of the hearing. The notice of hearing gives the hearing date as October 17, 2018 and does purport to require the filing of written opposition 14 days prior to the hearing date. However, neither of the proofs of service, DNs 12 and 15, evidences service of the notice of hearing. The moving party will need to either file a corrected proof of service sufficiently in advance of the hearing to allow it to appear on the court's docket by the time of the hearing or bring a corrected proof of service, executed and ready for filing, to the hearing. The court will hear the matter.

10.	11-40353-D-7 DMW-3	RODNEY/CRYSTAL JACKSON	MOTION FOR COMPENSATION FOR DOUGLAS M. WHATLEY, CHAPTER 7 TRUSTEE 8-21-18 [63]

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 appropriate compensation for services under Bankruptcy Code § 326(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

11.	18-25357-D-7	MICHAEL PRECIADO	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 8-26-18 [4]

12.	14-20064-D-7 DMW-4	GLENN GREGO	MOTION FOR COMPENSATION FOR DOUGLAS M. WHATLEY, CHAPTER 7 TRUSTEE(S) 8-15-18 [757]

Tentative ruling:

This is the trustee's motion for compensation. The debtor has filed opposition and augmented opposition, the trustee has filed a reply, and the debtor has filed a response to the trustee's reply which, like the "augmented" opposition and like many of the documents filed by the debtor in this case, was not in compliance with the court's local rules. For the following reasons, the motion will be granted.

As the court indicated in its ruling on the trustee's counsel's fee application, the court is quite familiar with the obstreperous behavior the debtor and, the court would add, his counsel have displayed throughout this case. They tried to obstruct virtually every step the trustee took in his attempt to administer the estate, driving up the costs of administration to an unconscionable degree. The level of vitriol in their papers opposing this motion is something the court, thankfully, rarely sees. However, the court has considered the debtor's arguments on their merits despite the unnecessary lack of civility. The arguments are without

merit.

First, the debtor attempts to contrast the steps he took in the case with those the trustee took, concluding that the trustee took minimal steps and solely to benefit himself and his attorney. As for his own efforts, the debtor begins with the notion that the court's order converting the case to chapter 7 "was successfully appealed by the Debtor without any help from the Trustee or his attorney." Debtor's Opp., filed Aug. 27, 2018 ("Opp."), at 2:4-5. The Bankruptcy Appellate Panel remanded the matter to this court solely because the court had failed to consider dismissal of the case as an alternative to conversion. This court held on remand that, among the various alternatives, conversion was in the best interest of creditors and the estate. This hardly qualifies as a successful appeal for the debtor.

Second, the debtor claims he "successfully opposed" several of the claims filed in the case. In fact, he was successful in only one, and that, only in part, when the court disallowed the secured portion of the IRS's claim but allowed the priority and general unsecured portions (over the debtor's objection). The court remembers well the myriad objections to the IRS's claim and other claims that were overruled repeatedly on procedural grounds and for failure by the debtor to submit admissible evidence. That the holders of some of those claims later withdrew their claims for reasons unknown to the court does not make them "successfully opposed" by the debtor. Further, the trustee took a position on only one of the debtor's many claim objections, and the objection was overruled. In short, the debtor's claim objections lend no support to his opposition to the fee application.

The debtor next complains about the trustee's settlement of certain claims for a total of $60,000 (incorrectly asserted by the debtor to be $65,000), which, the debtor claims, was done "essentially in order to pay himself [the trustee]." Opp. at 2:16. The court issued rulings on the trustee's motions to approve those compromises, concluding they were in the best interest of creditors. Nothing further is required here in regards to those compromises. It is ironic, however, that the court also approved a compromise among the trustee, the debtor, the debtor's father's trust, and Pacific Western Bank, pursuant to which the debtor agreed not to challenge or appeal the trustee's fees or those of the trustee's counsel. Yet, typically, the debtor has challenged both.

The debtor next contends the trustee is improperly double dipping by paying himself based on a formula that includes the amounts he paid his own attorney. There is a split of authority on the issue. The court in <u>Mohsen v. Wu (In re Mohsen)</u>, 506 B.R. 96 (N.D. Cal. 2013), examined cases from courts in other circuits on both sides of the issue, and concluded that payments to the trustee's professionals are properly included in the calculation of the trustee's fees under § 326(a). 506 B.R. at 105-06. This court agrees.

The debtor also contends the trustee has collected thousands of dollars in rents due the debtor's father's trust, which resulted in the trustee being sued by the trust in state court. Those issues were resolved by the settlement referred to above. The debtor's complaint that the trustee has failed to account for the rents collected was addressed in the court's ruling on the trustee's counsel's fee application, DN 740 on the court's docket, and need not be further addressed here.

The debtor also claims he proposed a chapter 11 plan "and filed it which would have paid 100% of any claim that survived the Debtor['] opposition." Opp. at 4:15-16. The debtor filed no chapter 11 plan in this case, and the order converting the

case, which he appealed all the way to the Ninth Circuit, precluded him from doing so.

Finally, the debtor complains there is no explanation for the discrepancy between the amount requested in this fee application and in the trustee's original application. The trustee purported to withdraw his original application after the debtor filed opposition. In the present application, the trustee has reduced by $1,668 the amount of fees he is seeking. The debtor has nothing to complain about in this regard.

The court concludes the fees requested are within the statutory cap set forth in § 326(a) and are eminently reasonable, especially in light of the extraordinary difficulties the debtor presented to the trustee's efforts all along the way. Accordingly, the motion will be granted. The court will hear the matter.

13. 16-27672-D-7 DAVID LIND MOTION TO PAY AND/OR MOTION FOR
DNL-23 ADMINISTRATIVE EXPENSES
9-12-18 [626]

Tentative ruling:

This is the trustee's motion for authority to make a distribution to unsecured creditors and for reimbursement of expenses incurred by the trustee aggregating $2,125. That is the only information about the relief sought that is included in the notice of hearing, which was the only document served on the creditor body. That is, the figure $2,125 in costs to be reimbursed was included in the notice, but the amount proposed to be distributed to unsecured creditors, not to exceed $385,000, was not. This was apparently an oversight, as the omission of the much larger figure was not in compliance with LBR 9014-1(d)(3)(B)(iv).[1]

The court will continue the hearing to permit the trustee to remedy this notice defect. The court will hear the matter.

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1 The rule requires a notice of hearing served without the motion or supporting papers to "succinctly and sufficiently describe the nature of the relief being requested and [to] set forth the essential facts necessary for a party to determine whether to oppose the motion."

14. 18-20774-D-11 S360 RENTALS, LLC CONTINUED MOTION TO SELL
WSS-3 8-29-18 [137]

15. 11-37779-D-7 R.C./SUSAN OWENS MOTION TO EMPLOY BACHECKI, CROM & CO., LLP AS ACCOUNTANT(S)
DNL-3
9-19-18 [41]

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 to employ Bachecki, Crom & Co., LLP as accountant on a flat fee basis is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

16. 15-29890-D-7 GRAIL SEMICONDUCTOR CONTINUED STATUS CONFERENCE RE: COMPLAINT
17-2183
CARELLO V. MACDONALD FERNANDEZ LLP ET AL
10-6-17 [1]

17. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION TO EXTEND TIME
17-2183 MHK-2
CARELLO V. MACDONALD FERNANDEZ LLP ET AL
8-27-18 [47]

Tentative ruling:

This is the motion of defendant and third-party plaintiff Macdonald Fernandez LLP (the "defendant") to reopen discovery and extend the deadline for dispositive motions. Cross-defendant Charles Stern (the "cross-defendant") and plaintiff Sheri Carello (the "plaintiff") have filed responses. For the following reasons, the court will grant the motion in part.

The motion is brought on the ground that the defendant's counsel has experienced serious health problems that have prevented him from handling his caseload as he normally does, and specifically in this case, prevented him from attending to discovery matters and dispositive motions. Some background is in order. By order filed February 6, 2018, stipulated to by the three parties participating in this motion (but not by cross-defendant Donald Stern, who has not appeared), discovery was required to be completed by June 15, 2018 and dispositive motions were due by July 15. The stipulation approved by the order was signed by the attorney whose health issues are the subject of this motion.

By order filed June 15, approving a stipulation filed June 14, signed by counsel for the same three parties, and specifically by the same attorney for the defendant, the defendant was given additional time – to June 25 – to provide its initial disclosures and respond to the plaintiff's written discovery, and the

defendant's deposition was rescheduled to July 12. There was no mention of discovery sought by the defendant. The stipulation included several paragraphs of recitals, including that the defendant's counsel had, on June 7, requested a two-week extension to serve responses to the plaintiff's interrogatories and request for documents, "due to his paralegal being on vacation, having heavy deadlines, and because his office miscalendared the response date." Stipulation filed June 14, 2018, ¶ 13. The recitals also described a two-week delay by the defendant in responding to a notice of its deposition, at the end of which the defendant objected that insufficient notice had been given under the applicable rule and stated no witness would be produced for deposition. No mention was made of any health issues and there was no indication the defendant wanted to take its own discovery.

At a continued status conference on July 19, a month after discovery had closed except for the defendant's responses and deposition, the defendant's counsel raised the issue that he had health issues that had prevented him from undertaking discovery or preparing dispositive motions.[1] He stated the defendant would like discovery to "remain open" and would like a dispositive motions bar date of September 15, adding that he had a number of motions to bring that he believed would resolve the case. The plaintiff's counsel observed that discovery had closed and the dispositive motions bar date had passed. The defendant's counsel, referring to his health problems, asked for more time. The court declined the request, stating that a party seeking relief from the June 15 order would need to file a motion. The court continued the status conference to August 15, stating it would expect to set a trial date that day unless a motion to extend the bar dates had been filed by then.

On August 6, the defendant filed an emergency motion to file a declaration under seal, which was granted on August 9. At the continued status conference, on August 15, the plaintiff's counsel said the defendant's counsel has advised her he would be undergoing a medical procedure at the time of the August 15 status conference. The court continued the status conference again, to August 30. Finally, on August 27, the defendant filed its counsel's declaration under seal, along with the present motion, in which the defendant requests another 90 days for discovery and 120 days for dispositive motions. Although the defendant could have chosen a much earlier date, the defendant set the hearing for a date several weeks after the motion was filed.

At the August 30 status conference, the court expressed sympathy for counsel's health issues but also its serious concerns about the delays by the defendant in conducting any discovery and the defendant's tardiness in filing its motion to extend. The court strongly urged the parties to plan accordingly. The defendant's counsel expressed appreciation for the trustee's and Charles Stern's counsel's sympathy for his health situation and said he would get together with them to discuss what discovery he would propose. He acknowledged he should "get rolling as soon as possible."

Yet the day after that status conference, the defendant's counsel was reluctant to give the plaintiff's counsel any idea of the nature of the discovery he intended to propound, even appearing defiant about the matter. In one email, the defendant's counsel responded, "What gives? My client representative, Mr. Macdonald is on vacation. I need to consult with him on the extent of the discovery. I can tell you that I will want the deposition of Mr. Charles Stern. But the decision of whether and to what extent to undertake paper discovery (with its attendant expense) is for the client." Plaintiff's Ex. A, M. Leader-Picone email dated Aug. 31, 2018, 10:36 a.m. This language strongly suggests the defendant's counsel had not even broached the subject with his client of the nature and extent of the discovery they

planned to undertake, this at a date two and a half months after the discovery bar date had passed.

Following up later the same day, the defendant's counsel said the trustee's counsel's emails were not offered in good faith (M. Leader-Picone email dated Aug. 31, 2018, 12:18 p.m.), adding, "You are suggesting that I am somehow amiss for not having a detailed discovery plan all worked out and motions ready to file," adding the plaintiff's attorneys could "just cool your jets a bit." Id. Two weeks after that and three months after the discovery bar date, the trustee's counsel asked when she might expect a response regarding the defendant's plans for discovery and motions. Counsel responded by stating he would be serving paper discovery on the plaintiff and on Charles Stern, and said there might be two other depositions but he needed to review earlier depositions in the Donald Stern adversary proceeding. He did not indicate what paper discovery he would propound or when and did not identify the other two potential deponents.

The court is understanding about medical issues, and counsel's sealed declaration certainly suggests he has had and continues to have several very serious medical problems. However, the sort of recalcitrance and foot-dragging, described above, especially following repeated expressions of concern by the court and repeated requests by opposing counsel for some indication of what discovery is in prospect, cause the court serious concerns. In addition, it appears counsel's medical issues are ongoing and expected to be so for some time. In other words, it does not appear counsel is now in a position to devote the necessary time to pursuing discovery, and further delays are likely. Counsel's assertion that his client was unaware of these issues and should not be prejudiced by them is insufficient. Parties to litigation and their counsel have a responsibility to prosecute their positions promptly and avoid delay, even if that means finding other counsel. As the defendant's counsel has provided the court with no assurance he will be able to handle his caseload in a timely manner, the court will reopen discovery and extend the dispositive motions bar date for short periods of time, and the new deadlines will be firm.

Finally, in light of Mr. Stern's age, 90, and difficulty in traveling, the court is sympathetic to him having to be involved in litigation at all, let alone subjected to a deposition, and is inclined to reopen discovery as to Mr. Stern on the conditions set forth in his response. Mr. Stern proposes November 30 as the deadline for written discovery propounded by himself or the defendant and a deadline for Mr. Stern to notice depositions within 20 days after receipt of the last written discovery response. He does not propose a deadline for the defendant to notice depositions. The trustee would agree to a firm discovery deadline of December 17. The parties have not suggested a new dispositive motions bar date. The court will hear from the parties on these issues.

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1 The defendant's present motion, not filed under seal, states the defendant's counsel was diagnosed as early as February 16, 2018. There is no indication he made the other parties' counsel aware of this before the June 15 discovery bar date ran or until the time of the July 19 status conference.

18. 14-21830-D-7 FRANCISCO DELCID MOTION TO AVOID LIEN OF
SLE-3 AMERICAN EXPRESS CENTURION BANK
10-3-18 [28]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by American Express Centurion Bank (the "Bank"). The motion will be denied for two reasons. First, the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank (1) through the attorneys who obtained its abstract of judgment; and (2) by certified mail to the attention of an "Officer authorized to accept service of process." The first method was insufficient because there is no evidence those attorneys are authorized to receive service of process on behalf of the Bank in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h)(1) and 9014(b). <u>See</u> <u>In re Villar</u>, 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because the rule requires service on an officer of the institution, not an "officer authorized to accept service of process." It is unlikely the officers of the Bank are authorized agents for the service of process.

The motion will be denied for the additional independent reason that the moving party has failed to claim an exemption in the property. There are four basic elements of an avoidable lien under § 522(f)(1)(A):

> **First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be … a judicial lien. 11 U.S.C. § 522(f)(1).**

<u>In re Goswami</u>, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting <u>In re Mohring</u>, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

The debtor's Schedule C filed in this case did not include a claim of an exemption in the real property against which the debtor seeks to avoid the Bank's lien. The motion states that amended schedules are being filed to list the property as exempt, and the debtor has filed as an exhibit a copy of a purported amended Schedule C. However, the amended schedule has not been filed with the court and is not accompanied by an amendment cover sheet or otherwise verified by the debtor, as required by Fed. R. Bankr. P. 1008.

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

19. 14-21830-D-7 FRANCISCO DELCID MOTION TO AVOID LIEN OF SRS
SLE-5 DISTRIBUTION, INC.
10-3-18 [33]

Final ruling:

This is the debtor's motion to avoid a purported judicial lien held by SRS Distribution, Inc. ("SRS"). The motion will be denied because SRS does not hold a valid judicial lien that may be avoided under § 522(f) of the Bankruptcy Code.

There are four basic elements of an avoidable lien under § 522(f)(1)(A):

> **First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be … a judicial lien. 11 U.S.C. § 522(f)(1).**

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), aff'd, 24 F.3d 247 (9th Cir. 1994) (table). In this case, the debtor has not satisfied and cannot satisfy the fourth requirement – that there be a judicial lien.

SRS obtained a judgment against the debtor on September 16, 2013 but did not record an abstract of judgment until May 6, 2014. In the meantime, on February 25, 2014, the debtor had filed the petition commencing this case. The recording of the abstract of judgment occurred post-petition, before entry of the debtor's discharge and before the closing of the case, the latter of which effectuated the abandonment of the property back to the debtor. See Bankruptcy Code § 554(c).[1] The recording was therefore in violation of the automatic stay of § 362(a) and is void. Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571 (9th Cir. 1992).

Because SRS does not have a valid judicial lien against the debtor's property, there is no lien for the court to avoid under § 522(f) and the motion will be denied by minute order. No appearance is necessary.

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1 The trustee issued a report of no distribution on April 3, 2014, before SRS recorded its abstract of judgment. However, although such a report may evidence the trustee's intent to abandon assets, the report "in and of itself cannot result in abandonment unless the court closes the case." In re Reed, 940 F.2d 1317, 1321 (9th Cir. 1991); In re Pretscher-Johnson, 2017 Bankr. LEXIS 1463, *11 (9th Cir. BAP 2017).

20.	14-21830-D-7 SLE-4	FRANCISCO DELCID	MOTION TO AVOID LIEN OF PACIFIC BELL DIRECTORY 10-3-18 [38]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Pacific Bell Directory ("Pacific Bell"). The motion will be denied because the moving party has failed to claim an exemption in the property. There are four basic elements of an avoidable lien under § 522(f)(1)(A):

> **First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be … a judicial lien. 11 U.S.C. § 522(f)(1).**

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), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

The debtor's Schedule C filed in this case did not include a claim of an exemption in the real property against which the debtor seeks to avoid Pacific Bell's lien. The motion states that amended schedules are being filed to list the property as exempt, and the debtor has filed as an exhibit a copy of a purported amended Schedule C. However, the amended schedule has not been filed with the court and is not accompanied by an amendment cover sheet or otherwise verified by the debtor, as required by Fed. R. Bankr. P. 1008.

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

21.	18-22453-D-7 MAS-1	ECS REFINING, INC.	MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY 10-2-18 [570]

22.	18-25553-D-7	MIHA AHRONOVITZ	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 9-28-18 [19]

23.	16-22659-D-7 SLE-1	KARLA HENDRIX	MOTION TO AVOID LIEN OF CIG FINANCIAL, LLC 10-3-18 [19]

24. 16-22659-D-7 KARLA HENDRIX
SLE-3

MOTION TO AVOID LIEN OF STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.
10-3-18 [24]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien held by State Farm Mutual Automobile Ins. Co. ("State Farm"). The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

If State Farm does not appear at the hearing and oppose the motion, the court will grant the motion in part and deny it in part because State Farm's lien impairs the debtor's exemption in the property only to the extent of $12,792 and any amounts of interest and costs that may have accrued since the judgment was entered. To the extent of $5,777, the lien does not impair the exemption.

A judicial lien is considered to impair the debtor's exemption to the extent that the sum of the judicial lien, all other liens on the property, and the amount of the debtor's claim of exemption exceeds the value of the debtor's interest in the property in the absence of any liens. Bankruptcy Code § 522(f)(2)(A). Here, the sum of the judicial lien, $18,569, all other liens, $144,383 (a deed of trust), and the debtor's exemption claim, $100,000, is $262,952, whereas the value of the debtor's property absent any liens is $250,160. Thus, the sum of the three amounts described in the formula, $262,952, exceeds the value of the property, $250,160, by $12,792, and to that extent, plus additional interest and costs, State Farm's lien will be avoided. The balance of the obligation secured by the lien, $5,777, will remain secured by the property.

Viewed another way, deducting the amount of the non-avoidable lien, $144,383, from the value of the property, $250,160, leaves $105,777 in equity in the property. Of that amount, the debtor has claimed $100,000 as exempt, leaving $5,777 in value to secure State Farm's lien.[1]

The court will hear the matter.

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1 Given that there is excess value in the property to secure only a portion of State Farm's lien, there is no equity remaining to secure the judicial lien of CIG Financial, LLC ("CIG"), which the debtor also seeks to avoid. CIG's abstract of judgment was recorded after State Farm's abstract; thus, CIG's judicial lien is junior in priority to State Farm's. Where there are multiple judicial liens and value in the property to secure only a portion of one of them, the one in senior position will be partially avoidable and the junior lien will be avoidable in its entirety. See All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 87-88 (9th Cir. BAP 2007).

25. 16-27672-D-7 DAVID LIND CONTINUED MOTION FOR RELIEF
DW-2 FROM AUTOMATIC STAY
COMMUNITY PARTNERSHIP FOR 7-24-18 [558]
REVITIALIZATION, ET AL. VS.

26. 16-27672-D-7 DAVID LIND CONTINUED MOTION FOR RELIEF
DW-2 FROM AUTOMATIC STAY
7-24-18 [558]

27. 18-20774-D-11 S360 RENTALS, LLC MOTION TO COMPEL
KSR-13 10-3-18 [179]

Tentative ruling:

Creditor Ronald Elvidge has filed motions to compel the production of documents by the debtor's manager, Raymond Sahadeo, Sahadeo's wife Brenna LaBine, and LaBine's corporation, La Vida, Inc. pursuant to subpoenas issued by Elvidge as permitted by orders permitting examinations under Fed. R. Bankr. P. 2004. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

If the motions had been brought under the rules governing discovery in adversary proceedings, the court would deny them out of hand for lack of a certification that the moving party made any attempt, let alone a sufficient one, to meet and confer with the parties objecting to the subpoenas in an effort to resolve the matters without court action. See Sanchez v. Wash. Mutual Bank (In re Sanchez), 2008 Bankr. LEXIS 4239, 2008 WL 4155115 (Bankr. E.D. Cal. 2008). Rule 2004 does not contain such a requirement. The court, however, advises the moving party that motions to compel the production of documents in connection under Rule 2004 orders are akin to ordinary discovery and parties seeking the same are always well-advised to make genuine attempts to meet and confer and file certifications of the same with their motions.

On the other hand, the court is taken aback by the level of recalcitrance

displayed by the parties objecting to the subpoenas.1 Their blanket objections strongly suggest any attempt to meet and confer would have been futile. Indeed, the objections reflect a serious misunderstanding of the way discovery, and especially discovery under Rule 2004, is supposed to work. For five of the ten categories of documents sought, the objecting parties made the following blanket objections and stated point-blank they would not produce any documents:

> Deponent objects to the request on the grounds that the request is vague, overbroad and unintelligible in the context of the issues presented in this Chapter 11 case. Deponent objects to the request to the extent that any document is covered by applicable privileges, including but not limited to attorney client privilege, work product immunity, spousal privilege or taxpayer privileges. Deponent objects to production of any document previously or contemporaneously produced by [the other objecting parties] pursuant to subpoena in this case on the grounds that such production is duplicative and burdensome. Deponent objects to the request because it is burdensome and not calculated to lead to admissible evidence. The Debtor is in the process of selling the property located at 4209 Almond Lane, Davis, California and deposing party will have no interest in the property, or discovery related to the property.

Sahadeo's Ex. 2, Objection by S360 Rentals [actually, by Sahadeo] to Subpoena for Rule 2004 Examination of Raymond Sahadeo, at 1:19-2:1, repeated in objections to Request Nos. 3, 8, 9, and 10. As for the other five categories of documents sought, the objecting parties made the same objections except that (1) they omitted the reference to the pending sale of the Davis property; and (2) instead of refusing to produce any documents, they stated, "Except for documents subject to the foregoing objections, deponent will produce responsive documents in his possession, custody or control." Id. at 2:9-10, repeated in objections to Request Nos. 4, 5, 6, and 7.

The court would expect experienced counsel to know that courts regularly look with disfavor on boilerplate objections that discovery requests are vague, overbroad, unintelligible, burdensome, and not calculated to lead to the discovery of admissible evidence. This is true in courts across the board, so far as this court is aware, but especially in Rule 2004 examinations, where the scope of the examination is very broad. The rule itself provides for discovery related to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b). "As the Rule's text makes clear, the scope of a Rule 2004 examination is 'unfettered and broad'; the rule essentially permits a 'fishing expedition.'" Rigby v. Mastro (In re Mastro), 585 B.R. 587, 598 (9th Cir. BAP June 5, 2018).

The court has reviewed the document lists included in the subpoenas and finds that each category falls squarely within the scope of Rule 2004. The moving party sought each and every document related to (1) the debtor's only real property, a single-family residence in Davis, California; (2) improvements to that property; (3) the indebtedness described in the $505,000 proof of claim filed by La Vida, Inc., which the court understands is a corporation owned by Sahadeo's wife, Brenna LaBine; (4) all minutes, membership logs, operating agreements and amendments, and proof of capital payments or injection of money for the benefit of the debtor LLC; (5) the $450,000 promissory note Sahadeo signed as manager of the debtor, pursuant to his settlement agreement with Elvidge, signed by them on April 20, 2017, and the deed of trust Sahadeo signed in that capacity, which was recorded and encumbers the debtor's real property; and (6) the three notes receivable listed as assets of the debtor in

its schedules.

The "vague, overbroad, unintelligible, burdensome, and not calculated to lead to the discovery of admissible evidence" objections are simply unreasonable.2 So far as the proposed sale of the real property is concerned, in the court's view, until the sale has been approved and escrow has closed, resulting in sufficient funds to satisfy Elvidge's claim in full if it is allowed, the sale has no bearing on the requested discovery. The debtor initially referred in its status report filed July 17, 2018 to an offer to purchase the property, but the motion to approve the sale was not filed until August 29. And as Elvidge points out, there is a slim margin in the purchase price for closing costs and none for real estate commissions.3 The purchase price does not appear to allow any room for property taxes.

The subpoenas were issued August 31, requiring production 40 days later, on October 10. Sahadeo's objections were signed on September 6, five weeks before the hearing date for the debtor's motion to approve the sale. (LaBine's and La Vida, Inc.'s objections were not dated.) At that time, therefore, and at the time set for production of the documents, the objections based on the contemplated sale had no merit. The blanket privilege objections were not accompanied by a description of "the nature of the withheld documents . . . in a manner that, without revealing information itself privileged or protected, [would] enable the parties to assess the claim [of privilege]," as required by Fed. R. Civ. P. 45(e)(2)(A), incorporated herein by Fed. R. Bankr. P. 9016. That is, the objecting parties failed to produce privilege logs from which the court and Elvidge might test the validity of their privilege claims. See Wallis v. Centennial Ins. Co., 2013 U.S. Dist. LEXIS 14181, *24-27, 2013 WL 434441 (E.D. Cal. 2013). And for the five categories in which the objecting parties agreed to produce documents, they excepted from that agreement "documents subject to the foregoing objections," thereby making themselves the arbiters as to which documents were properly withheld.

In short, the court finds the subpoenaed parties' objections are not well founded and is inclined to grant the motions. Having said that, the court is issuing rulings on Elvidge's motions to quash subpoenas in which the court expresses the intention to lift the stay to permit state court litigation between Elvidge and Sahadeo concerning the validity of Elvidge's claims, including his claim against the debtor, to go forward. The documents in Request Nos. 5, 6, and 7 of the subpoenas appear to relate to that controversy; thus, the court may deny the motions to compel insofar as they pertain to those categories, not on the merits but on the ground the disputes would more properly be determined in discovery in the state court litigation.

The court will hear the matter.

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1 Sahadeo served objections to his subpoena through counsel. Brenna LaBine and La Vita, Inc. served their objections pro se; however, their objections track verbatim those served by Sahadeo's counsel.

2 And they lend a strong element of irony to Sahadeo's statements in his oppositions to Elvidge's motions to quash: "This discovery dispute does not materialize in a vacuum. Mr. Elvidge himself has noticed five 2004 examinations, including those of Mr. Sahadeo, his wife Ms. Labine, her company and two other parties. Mr. Sahadeo has not objected to the taking of that discovery. But Mr. Elvidge objects to Mr. Sahaleo's attempt to obtain his own

discovery." Sahadeo's Opposition to Motion of Ronald Elvidge to Quash Subpoena, DN 161, at 6:9-12 (emphasis added). Those statements were made two and a half weeks after Sahadeo's counsel signed his objections to Elvidge's subpoena for the production of documents; that is, the objections discussed in this ruling.

3 The court disagrees with Elvidge that the purchase contract discloses real estate commissions. And the initials on the contract indicating that the offer was rejected by the seller with no counteroffer appear to be an inadvertent error.

28. 18-20774-D-11 S360 RENTALS, LLC MOTION TO COMPEL
KSR-12 10-3-18 [183]

Tentative ruling:

The court adopts, as though fully set forth herein, its ruling on Ronald Elvidge's motion to compel production of documents, DC No. KSR-13, also on this calendar. The court will hear the matter.

29. 18-20774-D-11 S360 RENTALS, LLC MOTION TO COMPEL
KSR-14 10-3-18 [175]

Tentative ruling:

The court adopts, as though fully set forth herein, its ruling on Ronald Elvidge's motion to compel production of documents, DC No. KSR-13, also on this calendar. The court will hear the matter.

30. 18-20774-D-11 S360 RENTALS, LLC CONTINUED MOTION TO QUASH
KSR-10 9-7-18 [145]

Tentative ruling:

Creditor Ronald Elvidge has filed motions to quash subpoenas issued by the attorney for Raymond Sahadeo – one subpoena was issued to Alerica Inc./Alerica Corporation [1] and the other to Cary Greisen. Sahadeo has filed oppositions to both motions and Elvidge has filed memoranda of points and authorities that are in the nature of replies, along with additional supporting declarations and exhibits. For the following reasons, both motions will be granted not on the merits but on the ground that discovery in connection with the dispute between Elvidge and Sahadeo discussed below would be more appropriately conducted in the pending state court action between them or in such other state court action or actions as may be commenced in state court concerning the dispute. As to the pending state court action and any others that may be filed concerning the dispute, the court will grant relief from stay to the extent, if any, that the stay that applies.[2]

Sahadeo is the managing member and, together with his wife, Brenna Labine, the sole owner of the debtor in this case, S360 Rentals, LLC. The debtor's only assets, as listed on its schedules, are a single-family residence in Davis, California and notes receivable from three different payors totaling $400,000 in value. The only

scheduled creditors in the case are four creditors who hold a first deed of trust against the Davis property (apparently, as to fractional interests) and Elvidge, who holds a second deed of trust.[3] The debtor has filed a motion to sell the Davis property, also on this calendar, for a price that would pay the first and second deeds of trust in full, with $14,000 left to cover costs. The debtor proposes to pay the holders of the first deed of trust in full and to block the remaining proceeds pending resolution of the dispute over Elvidge's claim, which the debtor intends to object to.

The dispute between Elvidge and Sahadeo arises out of an agreement they entered into in April of 2017 by which they agreed to consolidate several loans Elvidge had made to Sahadeo. They agreed the unpaid balance owed on the loans was $3,153,474, that Sahadeo would make a $450,000 payment by May 31, 2017, and that the balance of the consolidated debt would be all due and payable on March 31, 2018. Sahadeo agreed to secure portions of the consolidated debt by issuing or causing to be issued ten promissory notes in varying amounts, which would be secured by deeds of trust on ten different real properties apparently owned or controlled by Sahadeo. The Davis property owned by the debtor in this case was one of the ten – it was to be the subject of a deed of trust in the amount of $450,000. Attached to Elvidge's proof of claim are copies of a $450,000 note and recorded deed of trust signed by Sahadeo as manager of the debtor.

Sahadeo claims he and Elvidge agreed to terms in addition to those included in the written agreement between them. Sahadeo says Elvidge asked him to arrange sales of certain units Elvidge had invested in, which were located in a condominium building in downtown Sacramento. (The building is the subject of In re CS360 Towers, LLC, Case No. 17-20731 in this court.) In exchange, Sahadeo says, Elvidge agreed to credit against the consolidated debt owed him by Sahadeo Elvidge's excess profits on the condo units for which Sahadeo arranged sales. Sahadeo claims he arranged sales of the units but Elvidge either refused to close them or refused to credit Sahadeo with the profits. Sahadeo claims the excess profits on the sales "would have dramatically reduced [Sahadao's] liability"[4] on the consolidated debt. Sahadeo also contends Elvidge gave no consideration to the debtor in exchange for what was essentially the debtor's guaranty of a $450,000 portion of Sahadeo's consolidated debt to Elvidge.

Sahadeo caused the debtor to file this chapter 11 case on February 12, 2018, in response to Elvidge's recording of a notice of default against the Davis property.[5] There has been no activity in the case since then except for (1) applications by Elvidge and Sahadeo to take Rule 2004 exams; (2) Elvidge's motions to quash subpoenas, the first of which was filed in March; (3) the debtor's motion to sell the Davis property, also on this calendar; and (4) just filed, Elvidge's motions to compel production of documents from Sahadeo, his wife, and her corporation, also on this calendar. It could hardly be clearer that the only issue in the case is the dispute between Elvidge and Sahadeo.[6]

By the subpoenas Elvidge seeks to quash, Sahadeo seeks documents from (1) Alerica, an entity that has acted as an intermediary for Elvidge in various 1031 exchanges, including his investments in the condo units or some of them, and (2) Cary Greisen, an attorney who represents Elvidge and who was apparently involved in the preparation of the parties' April 2017 agreement. Elvidge moves to quash the subpoenas on the grounds that (1) the documents have nothing to do with the Davis property, Elvidge's proof of claim, or "anything conceivably within the scope of a Bankruptcy Rule 2004 exam" (Elvidge's Memos., DNs 148 and 153, at 3:3-4 and 2:28, respectively); and (2) the subpoenas call for documents protected by the attorney-

client privilege and/or Elvidge's right of privacy.

The dispute is solely between Elvidge and Sahadeo. As the debtor proposes to sell the Davis property, pay off the first, and block the remaining proceeds, the resolution of the dispute will not affect the debtor or other creditors except, perhaps, Sahadeo's wife's company, La Vida, Inc., which, however, (1) has never been scheduled by the debtor as a creditor, and (2) apparently chose to fund the renovations to the Davis property on an unsecured basis.[7] The parties' written agreement, signed in April of 2017, makes clear that Sahadeo agreed to secure his consolidated debt to Elvidge with notes and deeds of trust against ten different properties. This court has jurisdiction of only one of those properties. It has no jurisdiction over the other properties or their owners. This court is concerned with only a $450,000 portion of Sahadeo's $3,153,474 consolidated debt owed to Elvidge. The issues concerning the Elvidge/Sahadeo agreement, what it did and did not cover, what terms it was supposed to have included, and so on, are all issues of state law, not bankruptcy law. There is an action pending in Sacramento County Superior Court between Elvidge, on the one hand, and Sahadeo and another entity partially owned by him, on the other hand, presumably over one of the other nine properties, and it is certainly possible Elvidge or Sahadeo or another entity owned or controlled by him might commence similar state court litigation as to one or more of the other properties.

For this court to resolve the Elvidge/Sahadeo dispute as it pertains only to this debtor's portion of Sahadeo's obligation and only to this debtor's property would simply be illogical and of little use. Allowing Elvidge and Sahadeo to proceed to resolve the entire dispute in state court will promote judicial economy, allow for complete relief to be afforded the parties in a single forum, avoid unnecessary duplication of effort and expense, and avoid the possibility of inconsistent judgments. For these reasons, the court will grant the motions to quash solely on the basis that discovery would be more properly conducted in the state court litigation. To the extent, if any, the automatic stay applies to pending or contemplated state court litigation concerning the Elvidge/Sahadeo dispute, the court will lift the stay to permit the litigation to proceed to completion, with a limitation on enforcement of any judgment against the debtor without further order of this court. The amount of any state court judgment on the dispute will determine the amount of Elvidge's claim in this case.

The court will hear the matter.

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1 The subpoena was directed to Alerica, Inc. Attorney John Sutherland testifies in support of the motion to quash that the name Alerica, Inc. is incorrect. He states he is and always has been the president and CEO of Alerica Corporation. The parties do not appear to misunderstand what entity the subpoena is directed to, so the court will refer simply to "Alerica."

2 The court has the power to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, *24-25 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

3 The debtor scheduled no priority or general unsecured creditors. The IRS has filed a general unsecured claim for $4,290 and the Franchise Tax Board has filed a claim for $2,475 priority and $843 general unsecured. La Vida, Inc., an entity owned by Sahadeo's wife, Brenna Labine, has filed a general unsecured claim for $505,000. Based on the debtor's chapter 11 status report filed in

this case, it appears the claim is on account of funds loaned to the debtor to pay for renovations to the Davis property.

4 Sahadeo's Oppositions, DNs 157 and 161 ("Opps."), at 5:6-7.

5 See debtor's Status Report, filed July 17, 2018, ¶ 9.

6 Sahadeo calls the dispute "the focal point of this entire Chapter 11 case." Opps. at 2:1-2.

7 Sahadeo states, "[i]f Mr. Elvidge can establish the validity of his claim, the [remaining] proceeds [of the sale of the Davis property] will belong to him. In the event that the Elvidge claim is disallowed, the sale proceeds will be paid to unsecured creditors–primarily La Vida, Inc. Therefore, the validity of the Elvidge claim is the paramount issue in this case." Opps. at 2:16-19.

31.	18-20774-D-11 KSR-11	S360 RENTALS, LLC	CONTINUED MOTION TO QUASH 9-7-18 [151]

Tentative ruling:

The court adopts, as though fully set forth herein, its ruling on Ronald Elvidge's motion to quash subpoena, DC No. KSR-10, also on this calendar. The court will hear the matter.

32.	15-29890-D-7 DMC-4	GRAIL SEMICONDUCTOR	CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIAMOND MCCARTHY LLP FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL(S) 8-22-18 [1062]

Tentative ruling:

This is the application of Diamond McCarthy LLP, as special counsel to the trustee ("Special Counsel"), for a contingency fee from the settlement between the trustee and Sedgwick FundingCo LLC ("Sedgwick"). Steven Fredman has filed opposition. (Mr. Fredman also opposes the trustee's motion to approve the Sedgwick settlement, also on this calendar.) For the following reasons, the motion will be granted.

Special Counsel seeks an award of $582,264.03 in fees, representing 33-1/3% of the amount the trustee is to receive from Sedgwick, $2,250,000 less costs and the estimated value of the estate's interest in certain claims the estate is assigning to Sedgwick under the settlement. Mr. Fredman complains about the substantial amounts Sedgwick and Special Counsel will receive, when "none of [Mr. Fredman's] $10,000 'investment' will be returned." On that basis, he contends approval of the settlement "will be a clear error of judgment; an action not based upon consideration of relevant factors and thus arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law . . . ." Fredman Opposition, filed Sept. 4, 2018, at p. 1.

The court is sympathetic to Mr. Fredman's loss, but it is not attributable to

Special Counsel. The court is also aware the amount Special Counsel is seeking would appear very large to many people. However, that view does not take into account the services Special Counsel has performed in exchange for its fee or the risk Special Counsel undertook when it agreed to perform those services on a contingency basis. In short, comparing Mr. Fredman's loss to the amounts Special Counsel will receive is like comparing apples and oranges. Special Counsel's contingency fee is based on an earlier court order and does not appear to be improvident based on anything that has transpired since the order was entered.[1] Finally, Mr. Fredman's position does not take into account the claims of many others situated similarly to him.

For the reasons stated, the motion will be granted. The court will hear the matter.

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1 For the purpose of pursuing the estate's claims against Sedgwick, the trustee was authorized to employ Special Counsel "pursuant to 11 U.S.C. § 328(a) and the contingency fee agreement attached [to the order] as Exhibit A," which provided for the 33-1/3% contingency fee sought here. Order Granting Application to Employ, DC No. DNL-29, filed Aug. 7, 2017. Under § 328(a), the court may allow compensation on other terms if the contingency fee arrangement previously approved "prove[s] to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms . . . ."

33.	15-29890-D-7 DNL-42	GRAIL SEMICONDUCTOR	CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SEDGWICK FUNDINGCO, LLC 8-22-18 [1066]

Tentative ruling:

This is the trustee's motion to approve a compromise with Sedgwick FundingCo, LLC ("Sedgwick"). Steven Fredman, Ronald Hofer ("Hofer"), and Willis Higgins, Frank Holze, and Mitchell NewDelman (the "NewDelman Group") have filed oppositions and the trustee has filed a reply. The court conducted a preliminary hearing/status conference on October 3, 2018 and advised the parties that, while inclined to grant the motion, the court wanted it clarified that approval of the compromise would not impair the rights of non-parties. For the following reasons, with a few questions the trustee will need to address at the hearing, the court intends to grant the motion.

"The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed." In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). Although the bankruptcy court has "great latitude in approving compromise agreements," it may approve a compromise only if it is "fair and equitable." In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988), citing A & C Properties, 784 F.2d at 1381. In making this determination, the court must consider:

> **(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay**

necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." Greif & Co. v. Shapiro (In re Western Funding Inc.), 550 B.R. 841, 851 (9th Cir. BAP 2016). The proponent of the compromise – here, the trustee – has the burden of persuasion. A & C Properties, 784 F.2d at 1381.

Sedgwick and 1st Class Legal (IS) Limited ("1CL") provided monies to the debtor pre-petition to fund its obligation to pay the costs of its litigation against Mitsubishi Electric & Electronics USA, Inc. ("Mitsubishi"). The litigation concluded with a $55 million settlement, the proceeds of which were distributed, pre-petition, to Sedgwick and 1CL, among others. Sedgwick received $12,269,881 and 1CL received $14,600,000. The trustee contends, among other things, that both payments are avoidable as preferential transfers. She has filed an adversary complaint against 1CL and contemplated filing such a complaint against Sedgwick. The proposed settlement would resolve the trustee's claims against Sedgwick and would also resolve, as between the trustee and 1CL, her claims against 1CL. Thus, the settlement would remove from the trustee and the estate the burden of two very sizeable and complex pieces of litigation.

The settlement provides that (1) Sedgwick will pay the estate $2.25 million in settlement of all of the estate's claims against it and in consideration of the estate's assignment to Sedgwick of all the estate's claims against 1CL; (2) the estate will assign the 1CL claims to Sedgwick, who will be the exclusive owner and a "good faith purchaser" of the claims, for the purpose of § 363(m) of the Bankruptcy Code; and (3) Sedgwick's filed proof of claim for $1,498,895 secured will be reduced to an unsecured claim but increased in amount to $3.5 million, on account of its original $1,498,895 claim plus $2 million of the $2.25 million settlement payment. That is, Sedgwick will have an allowed general unsecured claim for $3.5 million.

The court will begin with Steven Fredman's opposition. He objects to the settlement as "grossly unfair and arbitrary." Fredman Opposition, filed Sept. 4, 2018, at p. 1. He states, "Sedgwick will get 3.5 million dollars. And none of my $10,000 'investment' will be returned." Id. He then argues the settlement will be "a clear error of judgment; an action not based upon consideration of relevant factors and thus arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law or if it was taken without observance of procedure required by law." Id. He adds that his rights are being violated by the agreement. These are nothing more than conclusions, unsupported by facts or even argument; thus, the court need not address them further.

To begin, it is highly significant to the court that the compromise was reached during a nine-hour mediation session with an experienced and highly-respected bankruptcy judge. In addition, the process of drafting a formal settlement agreement raised, as discussed below, an issue that had not been resolved in the mediation, and the parties submitted it, as they had agreed to do, to binding arbitration by the same judge, who resolved the question. These factors are highly relevant to the determination whether the compromise is fair and equitable. The court will now turn to the specific Woodson factors.

Although, in order to approve the compromise, the court need not find that all four of the Woodson factors weigh in favor of the compromise, the court does so

here. Concerning the probability of the trustee's success in litigation, the trustee has provided an extensive and detailed listing of the issues that would be in play. They include whether the various agreements between the debtor and Sedgwick operated to create an unsecured loan or collateral assignment, as the trustee contends, or a prepaid forward purchase of the Mitsubishi litigation proceeds, as Sedgwick contends, an issue to be determined, apparently, under New York law; whether the debtor was insolvent at the time of the $12,269,881 payment to Sedgwick; whether that payment constituted a transfer in the ordinary course of business within the litigation finance industry; whether the loan by Sedgwick to the debtor constituted an enabling loan under § 547(c)(3); whether Sedgwick breached its agreements with the debtor; whether Sedgwick's filing of a UCC financing statement in Florida sufficed to perfect a security interest in Sedgwick's favor or whether Sedgwick was required to file in California; whether the debtor received reasonably equivalent value in exchange for the payment to Sedgwick; and others.[1]

Many of these issues would be fact-intensive, including, as just one example, the question of breach of contract, which the trustee frames as follows: "[w]hether Sedgwick's conduct invaded the Debtor's discretion and right to control the Mitsubishi litigation and settlement process, as the Trustee contends, or was within the contractual boundaries established under the Funding Agreement and by custom and practice when litigation funding is provided." Mot. at 21:21-24. The trustee points out that one of the key witnesses, the debtor's lead counsel in the Mitsubishi litigation and settlement process, has died, and another key witness has been held in contempt of this court. In short, although the trustee's preference claim against Sedgwick, if not her breach of contract claims as well, appears well-taken at first glance, its outcome is far from certain, a conclusion the opposing parties do not challenge.

In terms of collectibility, Sedgwick contends it is a limited liability company that distributed the $12,269,881 in proceeds to its members, who are innocent subsequent transferees who would have no liability to the estate. The trustee has not made an analysis of this issue, but the opposing parties have also not challenged it from a legal standpoint; indeed, they have not mentioned it. Weighed in the balance, this factor cuts in favor of the compromise.

Hofer and the NewDelman Group focus on what the trustee is giving up in the compromise: the estate's claims against 1CL and its related defendants, which Hofer contends have a potential value of over $14 million. The NewDelman Group speaks in terms of the trustee giving up the 1CL claims "for absolutely no consideration" (NewDelman Group's Opposition, filed Sept. 19, 2018 ("NewDelman Opp."), at 5:25-26), going so far as to accuse the trustee of admitting, in her declaration and the motion, that she assigned "absolutely $0.00 value" to the 1CL claims in the compromise.

The court does not see such an admission. Instead, the assignment of the 1CL claims to Sedgwick is clearly part and parcel of an overall settlement for which the consideration to the estate is $2,250,000 in cash and the conversion of a $1.5 million secured claim into a $3.5 million general unsecured claim.[2] The estate would be relinquishing claims that would be uncommonly expensive to litigate and difficult, at best, to collect on. The NewDelman Group points out, apparently as a criticism of the trustee, that she incurred almost $63,000 in fees to her special counsel in the United Kingdom. The court, on the other hand, sees the fees as a legitimate attempt on the trustee's part to determine the likely enforceability and collectibility of a potential judgment against 1CL in its insolvency proceeding in the United Kingdom.[3] 1CL's co-defendants in the trustee's adversary proceeding are

themselves residents of countries other than the United States, and they are the recipients of subsequent transfers from 1CL of the $14.6 million it received from the Mitsubishi proceeds. Both of these facts weigh in favor of the compromise in terms of the "likelihood of success" in the litigation the trustee is giving up.

As is appropriate, the trustee has analyzed the Sedgwick settlement as both a compromise and a sale, noting as to the latter, that the settlement must have a valid business justification and be proposed in good faith. For the reasons discussed herein, the court has no hesitation in agreeing with the trustee that the settlement satisfies both tests. The NewDelman Group, however, complains that the trustee did not market the 1CL claims to anyone but Sedgwick. The trustee did, however, ask whether her special counsel – the firm that has represented her on a contingency fee basis in connection with her claims against Sedgwick – would pursue litigation against 1CL on a contingency basis, but the firm declined. The NewDelman Group has not made a persuasive case that the 1CL claims could have been sold to anyone other than Sedgwick, as part of this overall settlement. However, if the NewDelman Group wishes to enter an overbid at the hearing, the court will entertain it, but will take into account not only the $2.25 million the estate would receive from Sedgwick but also the value of the withdrawal of its claim as a secured claim.

Turning to the third Woodson factor, the complexity, virtually certain delay, and exceptional costs of the litigation – both the litigation against Sedgwick and the litigation against 1CL – weigh heavily here. From just the cursory review set forth above, it is clear the issues are many and complicated. 1CL, which, like Sedgwick, provided litigation funding to the debtor, would almost certainly raise the same types of defenses as Sedgwick, as described in the trustee's motion. Further, the 1CL litigation would raise, as the trustee points out, cross-border jurisdictional issues and the trustee would be faced with trying to obtain discovery from defendants in other countries. In cases such as this one, where the estate consists solely of cash and litigation claims, every dollar spent investigating and litigating is a dollar out of the pockets of creditors, and trustees are wise to view litigation claims from the standpoint of diminishing returns. Here, the court is convinced the trustee has made a reasonable decision as to how much to litigate versus when to compromise.

Hofer and the NewDelman Group each raise objections to specific aspects of the settlement. The NewDelman Group complains about the trustee's agreement to "provide cooperation and support" to Sedgwick in connection with its prosecution of the 1CL claims, asking how much the trustee and her counsel are going to charge the estate for this assistance and support. This concern seems ironic in light of the Group's apparent lack of concern about what would be, in the court's estimation, extraordinary costs and fees if the estate pursued either the Sedgwick or the 1CL litigation. In any event, the cost of the cooperation and support agreement, which requires the trustee to provide records, sign affidavits and other documents, and appear in proceedings as reasonably requested, will be far less than the fees and costs the trustee would incur if she pursued the litigation herself.

For his part, Hofer appears to misinterpret the "cooperation and support" provision in the settlement agreement as extending to "Sedgwick's prosecution of claims against, among others, Hofer." Hofer's Limited Opposition, filed Sept. 19, 2018 ("Hofer Opp."), at 2:21. The provision does not apply to any claims Sedgwick may have against Hofer, only the claims it will have against 1CL and its co-defendants. What Hofer is actually complaining about is the paragraph in the settlement agreement concerning the so-called Priority Agreements. The NewDelman Group also complains about this paragraph, contending it "direct[s] Sedgwick to

prosecute a claim against the NewDelman Group without acknowledging that the NewDelman Group has the absolute right to 1) object to any Proof of Claim and/or Amended Proof of Claim and 2) bring its own claims against Sedgwick or other parties." NewDelman Opp. at 5:19-22.

The paragraph says nothing about the trustee cooperating with, assisting, or supporting Sedgwick and it does not "direct" Sedgwick to do anything. It merely limits the time within which Sedgwick may take action against the other parties to the Priority Agreements, including Hofer and the NewDelman Group members. The opposing parties do not suggest Sedgwick has not had the right all along to take action to determine rights under the Priority Agreements, and the court is aware of no such restriction.

The paragraph first states that Sedgwick, on certain terms, "shall be permitted to assert any and all claims, rights and causes of action of Sedgwick's that may exist against all of the non-Debtor parties to the Priority Agreements" (Trustee's Ex. A, ¶ 8), adding that the trustee "shall take no position with respect to any prejudgment remedies sought by Sedgwick and Sedgwick's claim that the Priority Agreements are binding, valid and enforceable agreements in accordance with their terms." Id. at ¶ 8(a). The paragraph requires Sedgwick to commence an adversary proceeding to determine rights with respect to the Priority Agreements within 30 days from the effective date of the settlement agreement. In order words, the agreement will require Sedgwick to take at least the initial step toward resolving the disputed claims of Sedgwick, Hofer, the parties in the NewDelman Group, the Niro law firm, and 1CL under the Priority Agreements.

Hofer and the NewDelman Group both complain about the trustee's agreement to file, prior to any distribution of estate assets to holders of allowed claims, an interpleader action "whereby such assets shall not be distributed" (Trustee's Ex. A, ¶ 8(c)) to the other parties to the Priority Agreements until the completion of the litigation over the Priority Agreements. Hofer, relying on the fact that his claims against the estate have been allowed by an approved compromise, construes the trustee's agreement to interplead the funds as a "comprehensive cooperation agreement meant to solely assist Sedgwick in asserting claims against Hofer (and others)." Hofer Opp. at 4:3-4.

There are three problems with the argument. First, the allowance of Hofer's claims (which do not include a secured claim) did not assure Hofer of any particular time frame for distribution. Second, the fact that Sedgwick did not oppose the trustee's compromise with Hofer, by which Hofer's claims were fixed and allowed, did not deprive Sedgwick of its right to assert priority over his claims based on the Priority Agreements, as Hofer suggests.[4] And third, Hofer and the NewDelman Group parties have known virtually from the beginning of this case that the disputes over the Priority Agreements would have to be resolved,[5] but have themselves taken no steps toward a compromise or to bring the disputes to a head. In short, with one exception, the court finds nothing objectionable in the provisions in the settlement agreement concerning the Priority Agreements as part of a settlement intended to cover all the outstanding issues between the trustee and Sedgwick.

The trustee states in her reply that her agreement to interplead the funds does nothing more than preserve the status quo as to the parties' rights under the Priority Agreements. The NewDelman Group points out that the agreement requires the trustee to interplead only the distributions to the likely defendants in Sedgwick's complaint to determine rights under the Priority Agreements; that is, only the distributions to the parties to the Priority Agreements other than Sedgwick. She is

not required to also interplead Sedgwick's distribution. The court sees some logic in this objection and the trustee should be prepared to address it at the hearing.

With the above concern being clarified, the court is prepared to conclude that the compromise does not affect the rights of Hofer or the NewDelman Group members. Further, in her reply, the trustee states she "has no objection to clarifying in the order it is without prejudice to any rights that may be individually held by Hofer against Sedgwick and limiting the interpleaded funds to the portion of Hofer's claim that is subject to the Priority Agreement." Trustee's Reply, filed Sept. 24, 2018, at 4:10-12. Having already determined the Sedgwick compromise does not affect Hofer's rights, the court finds this clarifying language is a reasonable and sufficient accommodation. The court suggests it might also be applied to the NewDelman parties.

Hofer raises the prospect that 1CL would file a § 502(h) claim based on amounts 1CL may pay to Sedgwick on the assigned claims against 1CL, complaining that such a claim would dilute the funds available for existing holders of allowed claims. The trustee's reply reveals that this was a sticking point in finalizing the settlement agreement. The trustee and Sedgwick had agreed in their term sheet at the conclusion of the mediation that disputes arising in finalizing the agreement would be resolved by binding arbitration with the retired judge who was their mediator. They also agreed to waive the confidentiality of any disclosures the judge might need to make in his award.

The trustee has filed copies of the term sheet and the judge's award, in which he framed the issue as follows: "should the settlement agreement include a provision that requires Sedgwick to shield the bankruptcy estate from any claim 1st Class Legal might assert under 11 U.S.C. section 502(h)?" Arbitrator's Final Award, Trustee's Reply Ex. B, p. 2. The judge found that the parties had not bargained for such a provision and that it is not standard language in an agreement of this kind. More important for the court's present purposes, the judge observed that if the trustee had not settled with Sedgwick but instead pursued the 1CL claims herself and obtained judgment, "nothing would have prevented 1st Class Legal from filing a section 502(h) claim for whatever it paid the trustee on a judgment." Id. at p. 3. He added, "[w]hatever the trustee might have recovered from 1st Class Legal is encompassed in the 2.25 million it is to receive from Sedgwick." Id.

The court agrees with the arbitrator's analysis. Further, the settlement does not appear to limit the rights of Hofer or the NewDelman Group to object to any § 502(h) claim 1CL might file if Sedgwick obtains a recovery against 1CL. The settlement would, however, limit the opposing parties' right to object to Sedgwick's claim, as the settlement agreement provides that Sedgwick shall have an allowed claim. The court recognizes that Hofer and the NewDelman Group have what they believe are good reasons to object to the claim, given the $12,269,881 payment Sedgwick received as contrasted with the much lower amounts it had loaned the debtor. Those reasons are, however, certainly among the many factors the trustee took into account in arriving at the overall settlement and that she, in the exercise of her fiduciary duty to all creditors, decided were outweighed by the reasons for settling for the $2.25 million payment and the release of Sedgwick's alleged security interest in the remaining Mitsubishi proceeds.

As already indicated, Sedgwick will have an allowed general unsecured claim for $3.5 million, which is a $2 million increase over the amount of its filed secured claim. The trustee indicates the $2 million figure was agreed upon as "resulting from the returned preference in connection with the $2.25 million payment." Mot. at

2:3-4. The NewDelman Group refers to the increase as "nothing more than a kick-back to the buyer and evidence that the sale is not an arms-length transaction." NewDelman Opp. at 8:9-10. The NewDelman Group does not mention § 502(h), which provides for the allowance of a claim arising from the recovery of property under the trustee's avoiding powers. Here, the parties assigned a $2 million portion of the $2.25 million payment to the trustee's preference claim, apparently assigning the other $250,000 to her breach of contract claims. The NewDelman Group has offered no theory as to why this was not an appropriate apportionment, especially in the context of the compromise as a whole.

The NewDelman Group expressly and "emphatically" purports not to waive nine itemized rights, including the right to object to Sedgwick's proof of claim or amended proof claim. It is accurate that approval of the compromise would preclude that right (and possibly others of the nine listed as well – the court need not decide those issues at this time). However, the right of other creditors to object to a claim that is the subject of a court-approved compromise with the trustee is garden variety and very common; indeed, it is fundamental to the concept of a bankruptcy trustee's authority to compromise the claims of particular creditors. In short, why would a claimant, or the trustee for that matter, bother to negotiate a compromise – often, as here, a hard-fought battle – only to have the claim remain subject to objection by, in some cases, hundreds of other creditors?[6]

With that said, the court will reserve a determination as to the rights of the parties to the Priority Agreements to challenge this court's jurisdiction, another right the NewDelman Group members expressly "do not waive." The settlement agreement provides, "[t]he Bankruptcy Court shall retain jurisdiction over the Priority Proceedings even in the event that the Bankruptcy Case is closed prior to final adjudication of the Priority Proceedings." Trustee's Ex. A, § 8(d). It appears this provision was included to limit jurisdictional objections based on the closing of the parent case. Parties may not agree to confer jurisdiction where none exists; however, as indicated, the court is confident it may approve the compromise without determining the issue of its jurisdiction to decide disputes arising under the Priority Agreements.

Finally, the NewDelman Group challenges the trustee's requested finding that Sedgwick is a good faith purchaser of the 1CL claims. The Group asserts it has already questioned Sedgwick's good faith, that there is no evidence the sale was bargained for or bargained for in good faith, and that there is no evidence of lack of fraud, collusion, or a relationship between Sedgwick and other bidders because there was no bidding procedure and there are no other bidders. The NewDelman Group has not challenged Sedgwick's good faith in negotiating the settlement, only its conduct pre-petition. The court is satisfied the negotiations, conducted over a nine-hour period with an experienced bankruptcy judge as mediator, constituted bargaining in good faith. In the context of the compromise as a whole, it was not necessary for the trustee to market the 1CL claims separately. However, if the NewDelman Group or any of its members wishes to enter an overbid, the court will entertain it.

Finally, as to the fourth Woodson factor – the paramount interest of creditors and their reasonable views in the premises, it is significant that the only creditors opposing the motion (except Mr. Fredman) are parties to the Priority Agreements with Sedgwick. The court concludes their rights to litigate the validity and effect of the Priority Agreements are not affected by the compromise, and as to remaining creditors, the court readily concludes, for the reasons discussed above, the compromise is in their best interest.

Accordingly, provided it is clarified that the settlement does not affect the rights or interests of non-parties to the settlement agreement (except, as discussed above, the rights of other creditors to object to Sedgwick's claim), the motion will be granted. The court will hear the matter.

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1 The court is aware that the amount of the challenged payment to Sedgwick, $12,269,881, was greatly in excess of the amount Sedgwick had loaned the debtor (or paid the debtor to purchase an interest in the proceeds, if Sedgwick is right). However, the question of reasonably equivalent value is intertwined in this case with the issue of the debtor's insolvency at the time of the payment (see Motion to Approve Sedgwick Compromise, filed Aug. 22, 2018 ("Mot.") at 21:5-19), which suggests another layer of uncertainty in the probability of success analysis.

2 The trustee refers in her reply to a figure of $500,000 as an estimate of the value of the 1CL claims. This figure appears in the trustee's special counsel's fee application, also on this calendar, for purposes of special counsel's agreement to deduct, for the benefit of the estate, the estimated value of the 1CL claims from "net recoveries" in the Sedgwick litigation, before applying special counsel's contingency fee percentage. The parties appear to have arrived at the $500,000 figure in some arbitrary fashion, for purposes of special counsel's fee application. The court believes the "value" of the 1CL claims need not have been determined by the trustee in arriving at the $2.25 million payment to be made by Sedgwick. The payment will be made by Sedgwick in exchange for a bundle of rights, including Sedgwick's allowed general unsecured claim and the assignment of the 1CL claims, on which the trustee placed an overall value of $2.25 million.

3 The trustee states in her reply she received advice from her special counsel as to the estate's rights against 1CL's insolvency estate. The court has no reason to suppose she did not reasonably rely on that advice in reaching this settlement. Further, in an arbitration award issued by the judge with whom the trustee and Sedgwick mediated their differences, further discussed below, the judge said this about the 1CL claims: "My recollection is that very little time was spent negotiating over assignment of the 1st Class Legal claims, probably with good reason: 1st Class Legal is in administration proceedings in London, and liquidators have been appointed. I further recollect that neither the trustee nor Sedgwick expressed much hope of a significant recovery on this preference claim." Arbitrator's Final Award, Trustee's Reply Ex. B, p. 2.

4 Hofer contends this aspect of the settlement agreement "seeks to affect the rights of third-parties, namely and including Hofer, by seeking an order that would otherwise upend the otherwise-applicable distribution schemes and treatment of claims provided for in the Bankruptcy Code." Hofer Opp. at 3:7-10. The court disagrees. With the single exception that the interpleader requirement does not apply to the trustee's distribution to Sedgwick on account of its allowed claim, as discussed below, the Sedgwick settlement does not affect any rights of Hofer that have been fixed by court order and does not "upend" the distribution schemes and treatment of claims provided for in the Code. The court has again reviewed the settlement agreement between the trustee and Hofer, previously approved by the court, and finds no rights afforded to Hofer that would be violated by the Sedgwick settlement. Hofer has not explained why he believes the Sedgwick settlement violates the release provided to Hofer in his settlement and the court has found nothing to support

that conclusion.

5 Hofer himself states "[t]he validity of [the Priority Agreements] has been disputed by parties in interest in this case ad nauseum." Hofer Opp. at 3:26, n.3.

6 This is a very different issue from the rights of the third parties who are the defendants in the 1CL litigation. The court addressed the latter issue at some length at the preliminary hearing/status conference. The NewDelman Group members are not "third parties" whose rights must be preserved in the same sense as the defendants in the 1CL action. The NewDelman parties are creditors in this case and are rightly bound by compromises made by the trustee as the representative of all the creditors.

34. 15-29890-D-7 GRAIL SEMICONDUCTOR CONTINUED MOTION TO SUBSTITUTE PARTY
17-2249 DNL-1 8-22-18 [40]
CARELLO V. 1ST CLASS LEGAL (IS) LIMITED ET AL

35. 18-24295-D-7 CANDACE KIRVEN-PRAYER CONTINUED MOTION TO REDEEM
HDR-4 9-12-18 [27]

36. 18-22453-D-7 ECS REFINING, INC. MOTION TO USE CASH COLLATERAL O.S.T.
WFH-2 10-12-18 (632)