UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 22, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

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1. 14-23307-D-7 VINCENTE PORTER — MOTION TO CONVERT CASE TO CHAPTER 13
PLC-1 — 9-25-14 [44]

2. 14-25816-D-11 DEEPAL WANNAKUWATTE — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
WFH-1 — 9-10-14 [169]
IMG FUNDING, LLC VS.

Final ruling:

The hearing on this motion is continued to November 5, 2014 at 10:00 a.m. pursuant to the notice of continued hearing filed by the moving party on October 7, 2014. No appearance is necessary on October 22, 2014.

3. 14-27519-D-12 WW-5 — LOEK VAN WARMERDAM — CONTINUED MOTION TO AVOID LIEN OF SAN JOAQUIN VALLEY HAY GROWERS ASSOCIATION AND MOTION TO AVOID LIEN OF GROWERS' AG SERVICE 8-15-14 [37]

4. 14-28819-D-7 APN-1 — CHARLES MERIDITH — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-17-14 [16]
GATEWAY ONE LENDING AND FINANCE VS.

Final ruling:

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

5. 13-28020-D-7 HSM-7 — ROGER/BONNIE TURNER — CONTINUED OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 3-31-14 [54]

Final ruling:

This objection has been resolved by stipulated order entered October 17, 2014. Matter removed from calendar. No appearance is necessary.

6. 14-25820-D-11 WFH-1 — INTERNATIONAL MANUFACTURING GROUP, INC. — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 9-10-14 [224]
IMG FUNDING, LLC VS.

Final ruling:

The hearing on this motion is continued to November 5, 2014 at 10:00 a.m. pursuant to the notice of continued hearing filed by the moving party on October 7, 2014. No appearance is necessary on October 22, 2014.

7. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO VACATE
9-3-14 [584]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion to vacate and set aside orders filed July 23, 2014, by which the court granted the motions of the trustee's attorneys, Herum\Crabtree\Suntag ("Suntag"), and the trustee's accountant, Gabrielson & Company ("Gabrielson"), for interim allowance of compensation, DC Nos. HCS-5 and GMR-2, respectively (the "fee orders").1 The debtors also seek to vacate and set aside the minute orders filed August 28, 2014, by which the court denied the debtors' first motions to vacate and set aside the fee orders. Suntag and Gabrielson filed oppositions to the motion, and the debtors have filed a "supplemental" motion. For the following reasons, the motion will be denied.

With a couple of exceptions, the debtors have raised new arguments in this motion – arguments different from those they raised in their first motions to vacate the fee orders. The court will take first the arguments they have reiterated. First, the debtors have failed to make a showing that the fee orders resulted from a denial of due process, a violation of the 1964 Civil Rights Act, or a denial of equal treatment under the law.

Second, the debtors complain they were not served with or informed of the court's rulings or the July 23, 2014 or August 28, 2014 orders. The court rejected the same argument on the debtors' first motions to vacate the fee orders, noting that the rulings were posted in three places as part of the court's pre-hearing dispositions for its July 23, 2014, 10:00 a.m. calendar – on the court's website, outside the courtroom, and inside the courtroom. The court also noted that the debtors have been involved in this case for over a year, and that the court has drawn their attention several times to its procedures for the issuance of tentative and final rulings. The court concluded that if the debtors were not aware of the rulings, it was through their own fault. The debtors now expand on their argument, asserting they both have severely defective eyesight and no access to a computer or the Internet. This argument is disingenuous. The debtors have participated actively in this case for well over a year, filing motions, oppositions to the trustee's motions, and appeals from various orders. They have apparently not needed access to a computer or the Internet, or have had such access as they needed, and their alleged lack of access is not a valid excuse now. Nor is the debtors' eyesight.

Turning to the debtors' new arguments, the present motion refers to a fee application filed by Suntag in a different case, involving a different debtor. The debtors have quoted the court's ruling on that application, suggesting that the trustee wrongfully charged attorney's fees in this case and attorney's fees in the other case. However, the court's ruling in the other case has no relevance to Suntag's application for an allowance of fees in this case.

Next, the debtors contend Suntag charged thousands of dollars for "standard" work the trustee could have prepared himself. They add that debtor Janet Cheng does not speak, spell, or write English, and does not know any bankruptcy law, yet she prepared the debtors' motions, oppositions, and appeals in this case in less than an hour. The argument carries no weight. The court is familiar with the difficulties the trustee's attorneys have encountered in this case and the extent of the work

required. The court's earlier conclusion that the fees requested are reasonable remains unchanged.

The debtors contend Gabrielson did not prepare or file the debtors' tax returns for 2012 and 2013; that the debtors' own accountant prepared and filed their returns, and that he did so in less than an hour. As Gabrielson points out in its opposition, Gabrielson prepared the estate's tax returns for those years, not the debtors' personal returns. The debtors' argument on this point is unfounded.

Finally, in their "supplemental motion," the debtors simply expand their attacks on the trustee. They claim they had no valid creditor claims, and that they were forced into bankruptcy by the trustee and the court. They argue the trustee fraudulently paid attorney's fees and accountant's fees, fraudulently paid fraudulent creditor claims, fraudulently sold the debtors' property, fraudulently altered claims, fraudulently settled a claim against a third party, and fraudulently paid himself a "huge amount of administration fees." Supplemental Motion, filed Oct. 15, 2014, at 8:1. They accuse the trustee's attorneys of billing several times for the same item, and they object to the payment of any fees. The debtors' exhibits, consisting mostly of state court decisions, do not support the debtors' claims. The debtors' attacks on the trustee are nothing more than self-serving opinion, hearsay, and speculation. They are fueled, the court finds, by dissatisfaction over the turn of events in this case, and are unsupported by any credible admissible evidence.

For the reasons stated, the court finds no basis on which to vacate the fee orders or the August 28, 2014 orders on the debtors' first motions to vacate. Accordingly, the motion will be denied by minute order. No appearance is necessary.

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1 The debtors filed this motion twice – the first time, the motion was docketed at DN 584, the second time, at DN 588. The only difference between the two is that each debtor signed DN 584 twice, whereas each debtor signed DN 588 only once. The two notices of hearing, DNs 585 and 589, are also identical, except that each debtor signed the notice of hearing at DN 585 twice, but signed the notice of hearing at DN 589 only once. There is a more significant difference between the two notices of hearing, however. Along the left margin of DN 585, someone – apparently, one of the debtors – inserted the hand-written words "Accountant Original Gabrielson," and along the left margin of DN 589, inserted the hand-written words "Original Trustee Attorney Fees." Thus, it appears the debtors intended DNs 584 and 585 to pertain to the court's order on the trustee's accountant's fee application and DNs 588 and 589 to pertain to the order on the trustee's attorneys' fee application.

Because the two motions, DNs 584 and 588, are identical except for the double signatures on DN 584, the court finds that DN 588 is duplicative of DN 584, and the motion that appears at DN 588, which is on this calendar as Item 8, will be denied as duplicative and unnecessary. The court will address in the ruling on this motion, DN 584, the issues raised by the debtors as to both the trustee's accountant's fee application and the fee application of the trustee's attorneys.

8. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO VACATE
9-3-14 [588]

Final ruling:

This is the debtors' motion that is on the court's docket in this case at DN 588. The motion is virtually identical to the motion on the docket at DN 584. This motion will be denied as duplicative and unnecessary.

The motion will be denied by minute order. No appearance is necessary.

9. 13-29030-D-7 WILLIAM/JANET CHENG MOTION FOR COMPENSATION FOR
GMR-1 GEOFFREY RICHARDS, CHAPTER 7
TRUSTEE
9-22-14 [612]

Tentative ruling:

This is the trustee's motion for final compensation pursuant to §§ 326(a) and 330(a)(1) and (7) of the Bankruptcy Code. The debtors have not filed opposition directly to this motion. Instead, they filed a combined opposition and objection to the trustee's final report and his application for final compensation as contained in the final report. The court construes the combined opposition and objection as an opposition to this motion, DC No. GMR-1, and an opposition to the trustee's motion for approval of his final report, DC No. GMR-4 (Item 10 on this calendar). The trustee filed a reply to the combined opposition and objection, and on the same day, the debtors filed a "supplemental" opposition and objection. For the following reasons, the motion will be granted.

The debtors requested in their combined opposition and objection that a consolidated hearing be held on the two matters – the trustee's final report and his final compensation and the debtors' opposition to both – on December 17, 2014. For the reasons set forth in the court's ruling on the trustee's motion for approval of his final report, Item 10 on this calendar, which is incorporated herein by this reference, as though set forth in full, the debtors' request is denied.

The debtors' opposition reiterates various complaints they have made about the trustee's handling of this case during the year and three months it has been pending, and restates their ongoing position that the case is not a valid chapter 7 case. For example, they claim, again, that debtor Janet Cheng "under temporary insanity" filled in the petition commencing this case and filed it, that debtor William Cheng did not sign the petition, and that the trustee dismissed the case. As the court has found many times before, these arguments are unfounded.

The debtors add that the trustee conspired with the buyer of the debtors' motel to illegally transfer title to the buyer, that the trustee fraudulently paid his real estate broker, that the debtors were violently evicted out of their home at the motel and have been rendered homeless, that they did not have "secured judgment claims" on the property, that the trustee fraudulently paid the claims of persons and entities named PLM, Osterback, the attorneys of PLM and Osterback, and Dennis Brening, and that the trustee has an unreasonably small bond and has not presented evidence he has a bond at all. The debtors refer to records of the Sacramento

County Recorder, the Santa Clara County Superior Court, the California Court of Appeals, and Equifax, and claim that a process service is getting records for them from the Santa Clara County Superior Court, apparently because the debtors' eyesight prevents them from reading a computer screen. They claim they were not made aware of certain documents issued by the Ninth Circuit Bankruptcy Appellate Panel and the Ninth Circuit Court of Appeals. The debtors claim they are in fear for their lives over the value of the motel property. They also make references to alleged criminal forgery by a creditor named Brening.

The debtors refer at length to a property they apparently owned in San Jose, California, and alleged improprieties by PLM and Osterback, along with someone named Michael Schneider and an entity called California Plan. They attempt to implicate the trustee with PLM, Osterback, and Brening in allegations of fraudulently altering deeds, notes, and creditor claims, and destroying, altering, and concealing records. The debtors state they are filing a motion to restrain the trustee from paying fraudulent creditor claims and from acting as trustee without a bond or with an unreasonably small bond. Finally, they make the legal argument that attorney's fees can only be awarded as special damages, and are not compensable as an element of costs. They request that a hearing be set for December 17, 2014 on the basis that they are subpoenaing various supporting documents.

The legal argument that attorney's fees are not compensable as an element of costs appears to be drawn from an order of the Santa Clara County Superior Court on a demurrer filed by First American Title Insurance Company in an action entitled Cheng v. Osterback, a copy of which the debtors have filed as an exhibit. The argument has no relevance to a professional's right to compensation in a bankruptcy case. The debtors' various factual arguments are nothing more than their own opinions and conclusions; they are unsupported by any credible admissible evidence. Finally, the debtors' supplemental opposition and objection adds nothing the debtors have not argued before.

To conclude, nothing in the debtors' opposition and objection, their exhibits, or their supplemental opposition and objection persuades the court that the requested fees and costs are misstated or otherwise inappropriate. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion and the moving party is to submit an appropriate order.

The court will hear the matter.

10.	13-29030-D-7 GMR-4	WILLIAM/JANET CHENG	MOTION FOR APPROVAL OF TRUSTEE'S FINAL REPORT 9-22-14 [609]

Tentative ruling:

On September 19, 2014, the trustee in this case filed a final report (the "Final Report"). Consistent with the court's procedures in chapter 7 cases in general, on September 21, 2014, the Clerk of the Court issued and the Bankruptcy Noticing Center served (1) a Notice of Trustee's Final Report and Applications for

Compensation and Deadline to Object (NFR) ("Notice") and (2) an Order Fixing Deadline for Filing Objections to Trustee's Final Report and Applications for Final Compensation and/or Reimbursement of Expenses and Notice Thereof (the "Order"). The Notice and Order informed parties wishing to object to the Final Report or to applications for compensation that they must file a written objection within 21 days from the date of the Notice and Order. Objecting parties were also to file a notice of hearing in accordance with the court's self-set calendar procedures. On October 10, 2014, within 21 days from the date of the Notice and Order, the debtors filed a combined "opposition and objection" to the final report and the trustee's application for final compensation. The debtors requested that the court consolidate the two matters into one hearing, which they requested be set for hearing on December 17, 2014. The debtors stated they are complying with the Order in setting the matter for hearing on December 17, 2014.[1]

However, on September 22, 2014, the trustee filed a separate motion for approval of the Final Report (this item) and a separate motion for approval of his compensation (Item 9 on this calendar). The trustee stated he is holding a significant amount of funds remaining from the liquidation of assets, and wants creditors to be paid as promptly as possible. Considering the debtors' litigiousness throughout this case, the trustee was concerned they "may delay his ability to begin distribution of the assets if [they] oppose the [Final Report] and set a hearing on any objection beyond a reasonable time period." Trustee's Motion, filed Sept. 22, 2014, at 2:6-7. The trustee cited Fed. R. Bankr. P. 3009, which provides that "[i]n a chapter 7 case, dividends to creditors shall be paid as promptly as practicable," and § 105(a) of the Bankruptcy Code, which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code]."

Other rules applicable here include Fed. R. Bankr. P. 2002(a)(6), 2002(f)(8), and 5009(a), which provide that the clerk shall give at least 21 days' notice of a hearing on a request for compensation in an amount exceeding $1,000 (Rule 2002(a)(6)), that the clerk shall give notice of a summary of a chapter 7 trustee's final report if the net proceeds realized exceed $1,500 (Rule 2002(f)(8)), and that if a chapter 7 trustee "has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered." (Rule 5009(a).) Finally, Fed. R. Bankr. P. 9007 permits the court to designate the time, form, and manner of giving required notices, where not otherwise specified in the rules. There is no statute or rule that requires the court to permit the debtors to fix the date of the hearing on the trustee's final report or his application for compensation, and the court finds no reason in this case to permit the resolution of those matters to be delayed to December 17, 2014.

The debtors state they are requesting the December 17, 2014 hearing date to allow them time to subpoena certain parties, claiming mail is undeliverable to those parties. The parties are (1) Dennis Brening Trust and attorneys Joseph Scalia and Douglas Drake; (2) the trustee's accountant, Gabrielson & Company; (3) the trustee's real estate broker, Turton Commercial Real Estate; and (4) Clifford Scott Orloff, who purchased the debtors' motel from the trustee. According to the debtors, they "are subpoenaing the crucial evidences that trustee Richards have [sic] concealed for many, many months." Opposition and Objection, filed Oct. 10, 2014 ("Opp. & Obj."), at 1:27-28. The debtors have failed to specify what they expect those individuals to testify to, and have failed to demonstrate they have exercised diligence in seeking that testimony. The debtors have consistently opposed

everything the trustee has sought to do in this case; they now object to his final report on the grounds, primarily, that he has paid and proposes to pay invalid creditor claims, yet they have failed to object to those claims during the year and three months the case has been pending. It is ironic that the debtors' litigious conduct in this case only lessens the return to them as this is a solvent estate.

Debtors in chapter 7 cases rarely have standing to object to claims because it is rare that trustees are able to liquidate sufficient assets to pay allowed claims in full and return a surplus to the debtors. In this case, however, that will occur – the trustee projects he will return over $400,000 to the debtors. He made it clear at least as early as several months ago, when he proposed to sell the debtors' motel property, that there could well be a surplus in this case for the debtors. Thus, they had every incentive to object to creditor claims, but failed to do so. Further, the debtors have little credibility with the court, given their almost continual unfounded attacks on the trustee and his attorneys, and they have presented no valid basis on which the court should postpone the hearings on the trustee's final report and final compensation so the debtors may subpoena various witnesses to testify to unspecified matters. The debtors have simply given the court no credible basis on which to believe the representative of the Dennis Brening Trust or its attorneys, or the trustee's accountant or real estate broker, or the individual who purchased the debtors' motel property would offer testimony that would support the debtors' position on any of the issues at stake here.

For the reasons stated, the court will deny the debtors' request that the trustee's final report and final compensation be set for hearing on December 17, 2014, but will rule on the trustee's motions for approval of both the final report and the trustee's compensation now (the latter in the court's ruling on Item 9 on this calendar). As discussed above, the court finds no valid basis on which to deny approval of the trustee's final report. Accordingly, the motion will be granted.

The court will hear the matter.

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1 They stated that the trustee's "current date of his final report is 6-30-2015." Opp. & Obj., at 4:19-20. The June 30, 2015 date does appear in the final report; however, it is merely in the trustee's notes to his Individual Estate Property Record and Report, and it is expressly a "projected date."

11.	13-29030-D-7 HCS-6	WILLIAM/JANET CHENG	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S) 9-12-14 [597]

Tentative ruling:

This is the motion of Herum\Crabtree\Suntag for a second and final allowance of compensation as the trustee's attorneys. The debtors filed opposition. The trustee then filed a reply, and on the same day, the debtors filed a "supplemental" opposition. For the following reasons, the motion will be granted.

The debtors request that a hearing be held on this matter on December 17, 2014, presumably to coincide with the consolidated hearing they have requested on their opposition to the trustee's final report and the trustee's final compensation. For the reasons set forth in the ruling on the trustee's motion for approval of his final report, Item 10 on this calendar, which is incorporated herein by this reference as though set forth in full, the debtors' request is denied.

The remainder of the debtors' opposition tracks verbatim their opposition to the trustee's motion for compensation, DC No. GMR-1, which is on this calendar as Item 9. The court's ruling on that matter is equally applicable to this motion by the trustee's attorneys for compensation and to the debtors' opposition to it. Thus, the court refers to and incorporates by reference herein its ruling on DC No. GMR-1 as though fully set forth herein.

To conclude, nothing in the debtors' opposition, their exhibits, or their supplemental opposition persuades the court that the requested fees and costs are misstated or otherwise inappropriate. The record establishes, and the court finds, that the fees and costs requested, as voluntarily reduced by the moving party, are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion and the moving party is to submit an appropriate order.

The court will hear the matter.

12.	14-29135-D-7	KYLE MILLER	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 9-11-14 [5]

13.	12-39040-D-7 HCS-1	JUDITH FOSTER	CONTINUED MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR KELLER WILLIAMS REALTY, REALTOR(S) 8-27-14 [31]

14. 14-26740-D-7 CAROL JACKSON — MOTION TO AVOID LIEN OF GCFS, INC.
MOH-1 — 9-22-14 [16]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien held by GCFS, Inc. ("GCFS"). The motion was noticed pursuant to LBR 9014-1(f)(1), and no opposition has been filed. However, for the following reasons, the court is not prepared to grant the motion absent additional evidence.

The judgment underlying the lien is against James D. Jackson, not the debtor. According to the debtor's statement of financial affairs, Mr. Jackson is the debtor's spouse, from whom she is separated. According to the debtor's Schedule A, the debtor owns the real property against which she seeks to avoid the judicial lien; she has indicated on that schedule that her spouse has no interest in the property. Given that the debtor is apparently the sole owner of the property, and given that the judgment is against Mr. Jackson only, and not the debtor, the record is insufficient to allow the court to conclude that GCFS has a lien against the property to begin with. Under California law, the recording of an abstract of judgment with the county recorder of a particular county creates a judicial lien on real property of the judgment debtor in that county. Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a). GCFS's abstract of judgment was recorded on June 25, 2013 in the county where the property is located. If Mr. Jackson, the only judgment debtor, did not own an interest in the property on that date, the lien did not attach to the property.

There is no evidence as to when the debtor acquired her interest in the property, and no evidence Mr. Jackson ever had an interest in the property. If he did not have an interest in the property on June 25, 2013, the lien did not attach to the property, and there is no lien in favor of GCFS against the property for the court to avoid. On the other hand, if the debtor did not have an interest in the property on June 25, 2013, but acquired her interest after that date, there is a lien on the property, but it is not a lien the debtor can avoid. See Farrey v. Sanderfoot, 500 U.S. 291, 296 (1991) ["[U]nless the debtor had the property interest to which the lien attached at some point before the lien attached to that interest, he or she cannot avoid the fixing of the lien under the terms of § 522(f)(1)."]; Weeks v. Pederson (In re Pederson), 230 B.R. 158, 163, 164 (9th Cir. BAP 1999) ["A debtor must acquire an interest in property before the judicial lien attaches in order to be able to avoid the lien under § 522(f)(1)."]. If Mr. Jackson owned an interest in the property at the moment the abstract of judgment was recorded on June 25, 2013, then the lien affixed to his interest in the property. If, in addition, the debtor owned her interest in the property prior to the time the abstract was recorded, and has continued to own it since, she would be able to avoid the lien under § 522(f)(1). (The evidence demonstrates that, to the extent the lien attached to the property to begin with, and to the extent the debtor acquired her interest in the property before the lien attached and has held that interest since then, the lien impairs her exemption in the property.)

For the reasons stated, the court intends to continue the hearing to permit the debtor to submit evidence as to (1) whether Mr. Jackson owned an interest in the property on June 25, 2013, (2) whether the debtor owned an interest in the property prior to June 25, 2013, and (3) whether she has continued to own that interest since that date. The court will hear the matter.

15. 14-27641-D-7 EMILY MCCUISTON
SLC-1

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-17-14 [9]

16. 14-28841-D-7 MIREYA/RAYMOND MONTELONGO
RCO-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
9-22-14 [14]

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.

17. 14-25148-D-11 HENRY TOSTA
MF-14

MOTION TO LIMIT NOTICES SENT TO CREDITORS HOLDING EMPLOYEE WAGE CLAIMS AND TENANT DEPOSIT CLAIMS
9-25-14 [200]

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

18. 14-25148-D-11 HENRY TOSTA
WT-1
ECHEVERRIA BROTHERS DAIRY
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND MOTION FOR SURRENDER OF REAL PROPERTY
9-25-14 [207]

Final ruling:

The hearing on this motion is continued to November 19, 2014 at 10:00 a.m. No appearance is necessary on October 22, 2014.

19. 13-21159-D-7 DNL-2 — JANELLE NEWBORN-VINCENT AND DONALD VINCENT — MOTION TO APPROVE STIPULATION 9-24-14 [31]

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.

20. 13-21159-D-7 DNL-3 — JANELLE NEWBORN-VINCENT AND DONALD VINCENT — MOTION TO EMPLOY SMITH PATTEN AS SPECIAL COUNSEL 9-17-14 [25]

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 Smith Patten as special counsel is supported by the record. As such the court will grant the motion to employ Smith Patten as special counsel. Moving party is to submit an appropriate order. No appearance is necessary.

21. 14-25464-D-7 MDM-1 — ELSA LEON — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 9-12-14 [13]

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 extend deadline to file a complaint objecting to discharge of the debtor is supported by the record. As such the court will grant the motion and extend the deadline for the case trustee to file a complaint objecting to discharge of the debtor through December 22, 2014. Moving party is to submit an appropriate order. No appearance is necessary.

22. 14-29176-D-7 APN-1 — FRANK FOX — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-22-14 [9]
SANTANDER CONSUMER USA, INC.
VS.

Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting relief from stay. Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3). The moving party is to submit an appropriate order. No appearance is necessary.

23. 14-28487-D-7 MAURO MARTINEZ

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
8-21-14 [5]

24. 13-35288-D-7 DUSTIN/KAREN BOLE
14-2097
GENERAL COUNCIL OF THE ASSEMBLIES OF GOD V. BOLE ET

MOTION TO STRIKE
9-11-14 [48]

Tentative ruling:

This is the plaintiff's motion to strike paragraphs 3 and 4 of that portion of the defendants' Answer to Complaint entitled Request for Relief. The defendants have filed opposition, and the plaintiff has filed a reply. For the following reasons, the motion will be denied. However, the court will sua sponte dismiss the claims for relief set forth in those paragraphs for lack of jurisdiction.

The defendants filed their answer to the plaintiff's complaint on July 7, 2014. In their Request for Relief, at the end of the answer, the defendants request, as is standard in answers to complaints, that the court dismiss the action with prejudice, that the plaintiff take no relief from its complaint, for costs of suit, and for such further relief as the court deems just. However, in paragraphs 3 and 4, the defendants seek the following affirmative relief:

> **3. $175,000 for each registered domain that were turned over in the default judgment, totaling $5,600,000.00; [and]**
>
> **4. Three times our loss in the inventory that was destroyed due to adhering to the Federal Court Order in the default judgment. The approximated retail value was $335,000.00 of inventory that was destroyed (3 times $335,000.00 equals $1,005,000.00); . . . .**

Answer to Complaint, filed July 7, 2014, at 4:21-25.

As the plaintiff points out, any claims the defendants may have against the plaintiff are property of the bankruptcy estate in the defendants' chapter 7 case in which this adversary proceeding is pending, and the defendants do not allege that the trustee has abandoned those claims back to the defendants as the debtors or assigned the claims to them.[1] A debtor's causes of action become property of his or her bankruptcy estate. Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001). As such, the defendants have no standing to pursue the claims. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004).

Nevertheless, the court is not convinced the plaintiff's choice to move to strike those paragraphs from the defendants' answer, pursuant to Fed. R. Civ. Proc. 12(f)(2), incorporated herein by Fed. R. Bankr. P. 7012(b), was correct. Pursuant to Rule 12(f)(2), "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." The defendants' claims for relief quoted above do not appear to fit within this definition of matter the court may strike from a pleading. Thus, the court will deny the motion.[2]

However, standing is an element of subject matter jurisdiction (Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1121-22 (9th Cir. 2010)), and as such, it is an issue the court may raise on its own. "Federal courts are always 'under an independent obligation to examine their own jurisdiction,' . . . and a federal court may not entertain an action over which it has no jurisdiction." Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000) (citations omitted); see also Fed. R. Civ. P. 12(h)(3), incorporated herein by Fed. R. Bankr. P. 7012(b) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Because the defendants lack standing to pursue the affirmative claims for relief set forth in their Answer to Complaint, the court lacks subject matter jurisdiction of those claims, and will dismiss them pursuant to Fed. R. Civ. P. 12(b)(1), incorporated herein by Fed. R. Bankr. P. 7012(b).

The defendants' several arguments are all unavailing. First, they claim the plaintiff is "asking the Court to rush to judgment" at the pleading stage with no factual proof. Opposition, filed Oct. 8, 2014 ("Opp."), at 1:18. They add that discovery may reveal facts that would "bear on [the defendants'] eligibility to pursue statutory damages" (id. at 1:22), and that it is the "purpose of discovery to begin with: to establish the facts *before* awarding or denying remedies." Id. at 1:25-26. As indicated above, any claims the defendants may have against the plaintiff are property of their bankruptcy estate, and may be pursued only by the trustee. Thus, it does not matter what discovery might reveal or whether the claims have merit. The defendants simply have no standing to pursue the claims.

This analysis assumes that the defendants' claims against the plaintiff arose prior to the filing of their bankruptcy petition, on December 2, 2013. The plaintiff's complaint indicates the plaintiff's claims have been reduced to a judgment issued by the district court for the Northern District of Illinois in June of 2011 (the "Judgment"), which in turn, arose out of the defendants' operation of a business known as The Ranger Supply Store. According to the defendants' statement of financial affairs, the defendants operated a business under the name The Ranger Supply Store, Inc. between June of 2008 and September of 2009. Thus, it is clear the defendants' claims against the plaintiff arose prior to their bankruptcy filing.

The defendants state in their opposition that as of the petition date, "the Debtors did not have nor anticipated any open civil lawsuit . . . ." Opp. at 2:6-7. This argument might have a bearing on whether the defendants would be judicially estopped from pursuing these claims. See Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782-83 (9th Cir. 2001). But it does not change the fact that the claims are property of the estate. See Boland v. Crum (In re Brown), 363 B.R. 591, 605 (Bankr. D. Mont. 2007) (an "accrued cause of action is property of the estate even if the debtors were unaware of the claim when they filed for bankruptcy protection.). "Property of the debtor does not escape the bankruptcy estate merely because the debtor is unaware of its existence." Id. (citation omitted).

Next, the defendants contend they have made their claims against the plaintiff

in compliance with Fed. R. Bankr. P. 7008(a) (statement that proceeding is core or non-core) and 28 U.S.C. § 157(b)(2)(A) (matters concerning administration of the estate are core proceedings). However, assuming without deciding that the defendants' claims are core proceedings, that does not change the fact that the claims are property of the estate and subject to prosecution only by the trustee. The defendants also quote Fed. R. Civ. P. 13(a) (compulsory counterclaims), incorporated in bankruptcy proceedings by Fed. R. Bankr. P. 7013, claiming they have made their claims against the plaintiff as a counterclaim. As with the defendants' other arguments, assuming without deciding that the defendants' claims are compulsory counterclaims, those claims nevertheless belong to the bankruptcy estate and not the defendants.

The defendants also contend their claims for relief "should not be stricken because they may prove to be relevant to issues beyond remedies." Opp. at 2:1-2. The court determines in this ruling only that the defendants' claims against the plaintiff are property of their bankruptcy estate; the court is making no determinations at this time about the issues the defendants may raise in defense of the plaintiff's complaint. The defendants also argue that "Plaintiff will suffer no prejudice simply because some words reside on a page in Debtor's Request for Relief." Id. at 2:2-3. Words, as used in legal pleadings, have considerable power, but in any event, whether the plaintiff stands to suffer prejudice or not is not relevant to the question of who holds the defendants' claims.

Finally, the defendants contend they were unable to respond to the plaintiff's complaint that lead to the Judgment because of health issues, the loss of their daughter, and monetary issues. Again, the court has not been asked to determine what issues the defendants may raise in defense of this action. The only question before the court is whether the defendants may pursue claims against the plaintiff. The court concludes the defendants have no standing to pursue those claims, and thus, the court has no jurisdiction to consider them.[3]

The court will hear the matter.

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1 The case is still open; thus, abandonment pursuant to § 554(c) has not come into play. However, even if the case were closed, the defendants' claims against the plaintiff would not have been abandoned to them because the defendants failed to list any claims against the plaintiff (or anyone) – whether contingent or unliquidated, or any counterclaims, on their bankruptcy schedules. See § 554(c) and (d).

2 In addition, it does not appear the motion to strike was timely filed. See Rule 12(f)(2).

3 In light of Stern v. Marshall, 131 S. Ct. 2594 (2011), and its progeny, the parties should not presume from this ruling that the court would have jurisdiction to consider the defendants' claims against the plaintiff if the standing hurdle could be overcome, or that, even if the court would have such jurisdiction, the court would choose to exercise it.

25. 14-20710-D-7 JERENE BONDS
BLL-5

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JERENE ROLANE BONDS, REBECCA MOORE, JOHN REGER
9-10-14 [44]

Final ruling:

This motion has been granted by order filed October 9, 2014. As a result this matter is removed from calendar. No appearance is necessary.

26. 14-20710-D-7 JERENE BONDS
BLL-6

CONTINUED MOTION TO SELL
9-10-14 [48]

27. 14-25816-D-11 DEEPAL WANNAKUWATTE
JC-1

MOTION TO EMPLOY DAVID A. HONIG AS ATTORNEY
10-1-14 [221]

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

Tentative ruling:

This is the motion of David A. Honig of Joseph & Cohen, P.C. for authorization to be employed as counsel for the Official Committee of Unsecured Creditors in the Deepal Wannakuwatte Chapter 11 and the International Manufacturing Group, Inc. Chapter 11, which cases are related. Although this motion was noticed under f(2) of the Local Bankruptcy Rules, below are some issues that counsel should be prepared to address at the hearing.

First, it appears that the motion and notice were not served on all known creditors and parties in interest. In light of counsel's request to represent committees in related cases and the unique terms of employment, the court is inclined to continue the hearing and require service on all parties that have not been served heretofore. Second, counsel should be prepared to explain to the court how charges for services rendered will be allocated between the two estates. Third, an apparent conflict will arise between the two estates regarding potential claims against one another. Counsel should be prepared to address how this issue will be handled.

The court will hear the matter.

28. 14-25820-D-11 JC-1 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION TO EMPLOY DAVID A. HONIG AS ATTORNEY
10-1-14 [263]

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

See calendar item no. 27.

29. 12-34034-D-7 BLG-1 — JAMES/KRISTIE MATHEWS — MOTION TO AVOID LIEN OF CITIBANK, N.A.
10-8-14 [42]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Citibank, N.A. (the "Bank"). The motion will be denied because the moving parties 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 parties served the Bank (1) through the attorneys who obtained its abstract of judgment; an (2) at a street address, but with no attention line. The first method was insufficient because there is no evidence the attorneys who obtained the Bank's abstract of judgment are authorized to accept service of process on the Bank's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because service on an FDIC-insured institution such as the Bank must be to the attention of an officer, whereas here, there was no attention line.

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

30. 11-41448-D-7 HCS-4 — GHANSHYAM/JIGNASA PATEL — CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, AND SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
9-10-14 [246]

Tentative ruling:

This is the motion of the trustee's counsel for a first and final allowance of compensation. The motion was noticed pursuant to LBR 9014-1(f)(1), and no opposition has been filed. However, for the following reason, the court is not prepared to grant the motion without a hearing. The hearing was continued to this date to permit the moving party to file a notice of continued hearing and serve it on a creditor who had not previously been served. The moving party has done that; however, the notice of continued hearing purports to require the filing of written opposition 14 days prior to the hearing date, and specifically names October 8, 2014 as the last date to file and serve opposition. Yet the notice of continued hearing was not served until October 6, 2014, just 16 days before the continued hearing date and just two days before the purported late date to file opposition. As a result of this notice defect, the court will hear the matter to determine whether any party-in-interest wishes to present opposition.

The court will hear the matter.

31. 14-25148-D-11 HENRY TOSTA
MF-15

MOTION TO SELL
10-1-14 [214]

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

32. 14-25148-D-11 HENRY TOSTA
MF-16

MOTION TO EMPLOY RONALD VAN LEACHMAN AS SPECIAL COUNSEL
10-8-14 [227]

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

33. 14-25148-D-11 HENRY TOSTA
MF-17

MOTION TO EMPLOY FARMERS LIVESTOCK MARKET, INC. AS AUCTIONEER(S) AND/OR MOTION TO EMPLOY TURLOCK LIVESTOCK AUCTION YARD, INC. AS AUCTIONEER(S)
10-8-14 [234]

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

34. 14-22151-D-7 RAYMOND SADOWSKI
PD-2

CONTINUED MOTION FOR APPROVAL OF STIPULATION REGARDING USE, DISTRIBUTION, AND SURCHARGE OF CASH COLLATERAL
9-17-14 [41]

35.	14-27660-D-7 JRR-1	JASMINE FARLEY MARTINEZ	TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 9-9-14 [16]
36.	14-27372-D-7 DEF-1	ARMANDO RECALDE	MOTION TO COMPEL ABANDONMENT 10-2-14 [12]
37.	14-27393-D-7 JRH-1	JULIE JOHNSON	MOTION TO COMPEL ABANDONMENT 9-30-14 [15]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon certain real property. The motion was noticed pursuant to LBR 9014-1(f)(2); under ordinary circumstances, the court would entertain opposition, if any, at the hearing. However, the court is not prepared to consider the motion at this time because there is no evidence the motion and notice of hearing were served on the chapter 7 trustee. The trustee's name and address do not appear on the service list attached to the proof of service.

The debtor has filed a document entitled "Trustee's Declaration on Non-Opposition"; however, that document is not signed. Instead, the signature line was simply left blank. The court will hear the matter, and if the debtor produces a declaration signed by the trustee, or if the trustee appears, the court will proceed to consider opposition, if any. Otherwise, the court will continue the hearing to allow the debtor to file a notice of continued hearing and serve it, together with the motion, on the trustee.

The court is aware that the trustee has filed a Notice of Filing Report of No Distribution in this case. However, that does not excuse the debtor from the requirement of serving the trustee.

The court will hear the matter.