UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 25, 2017 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.	17-25014-D-7 JAMES/STACY HOLT RCO-1 WELLS FARGO BANK, N.A. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 9-21-17 [21]

Final ruling:

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

2. 17-24617-D-7 PATRICIA PAYTON MOTION TO COMPEL ABANDONMENT
TAG-1 9-20-17 [14]

Tentative ruling:

This is the debtor's motion ostensibly to compel the trustee to abandon the estate's interest in certain property. The trustee has filed opposition. Because the motion in fact seeks a determination that the property in question is not property of the estate and because that relief is properly sought only by adversary proceeding, the motion will be denied.

The introduction to the motion states that the debtor seeks to compel the trustee to abandon the estate's interest in the debtor's non-filing spouse's separate property. The conclusion states she seeks to compel the trustee to abandon the estate's "alleged interest" in her spouse's house and bank account. The debtor acknowledges the trustee is claiming an interest in the assets on behalf of the estate; thus, the debtor seeks to persuade the court that: (1) "[t]he house and bank account are not assets of the bankruptcy estate and debtor has no community property interest"; and (2) "[t]he separate property nature [of the assets] was not changed." Debtor's Motion, DN 14, at 5:6-7, 7:18. Abandonment, however, is not the right remedy because if the house and bank account are in fact the spouse's separate property, the estate has no interest in them and there is nothing for the trustee to abandon.[1]

The motion includes allegations as to when the debtor's spouse purchased the house; the source of the funds used to pay off the prior mortgage; the spouse's intention, stated in his will, that the house remain his separate property; the source of the funds in two bank accounts in the spouse's name alone; the claim that the debtor has never contributed funds to or commingled funds in the bank accounts; and an alleged agreement between the debtor and her spouse to keep their finances separate and maintain separate bank accounts.[2]

The trustee counters with copies of recorded grant deeds showing that, apparently for a period of over two years, between January of 2015 and March of 2017, the real property was in the names of the debtor and her spouse, "husband and wife, as joint tenants." The trustee has also submitted documents showing the debtor and her spouse signed a deed of trust in January of 2015 to secure a revolving line of credit up to a maximum of $80,000; the debtor listed the property on her Schedule A/B in a chapter 13 case she filed in 2016 (since dismissed); and the debtor listed the deed of trust holder as being owed $80,000 on her Schedule D in that case. These documents, together with questions about the sufficiency and use of the debtor's and her spouse's respective incomes, raise questions about the community versus separate property nature of the real property. The debtor states in her declaration supporting this motion that the funds in her spouse's bank account are from his pension and a home equity line of credit secured by the house. As the debtor is a co-borrower on the line of credit, the trustee also questions the nature of the funds in the bank account.

The court need not and cannot resolve these issues on this motion because the determination of whether an interest in property is an interest belonging to a bankruptcy estate is an issue to be determined by adversary proceeding. Fed. R. Bankr. P. 7001(2);[3] Cogliano v. Anderson (In re Cogliano), 355 B.R. 792, 806 (9th Cir. BAP 2006) ["[W]hen the question of whether property is part of the estate is in controversy, Rule 7001(2) requires an adversary proceeding . . . ."]; In re Indian

Nat'l Finals Rodeo Inc. & Indian Nat'l Finals Rodeo Ass'n, 2011 Bankr. LEXIS 2400, *22 (Bankr. D. Mont. 2011). Accordingly, the motion will be denied.

The court will hear the matter.

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1 "On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." § 554(b) of the Bankruptcy Code (emphasis added).

2 The debtor's testimony on at least several of these issues is inadmissible as without foundation and with no showing of personal knowledge.

3 "The following are adversary proceedings: . . . (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property . . ." Rule 7001(2) (emphasis added).

3.	14-25820-D-11 15-2122 MCFARLAND V. CARTER ET AL	INTERNATIONAL MANUFACTURING GROUP, INC. IWC-2	MOTION FOR JUDGMENT ON PLEADINGS 9-27-17 [50]

Tentative ruling:

This is the defendants' motion for judgment on the pleadings on Count 5 of the plaintiff's complaint, pursuant to Fed. R. Civ. P. 12(c), incorporated herein by Fed. R. Bankr. P. 7012(b). The plaintiff, who is the plan administrator of the confirmed plan in the underlying chapter 11 case in which this adversary proceeding is pending, has filed opposition and the defendants have filed a reply.1 For the reasons discussed below, the court intends to grant the motion.

"Judgment on the pleadings is proper when, taking all the allegations in the pleadings as true and construed in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law." Living Designs, Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 360 (9th Cir. 2005). "Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir. 1989), citations omitted.

The plaintiff's complaint includes counts for avoidance and recovery of fraudulent transfers, disallowance or subordination of the defendants' claims against the estate, and – Count 5 – a declaratory judgment to the effect that a joint venture or general partnership existed between two of the defendants, on the one hand, and the debtor in the underlying case, International Manufacturing Group, Inc. ("IMG"), on the other hand. The defendants contend the plaintiff is barred by the doctrine of in pari delicto from pursuing the declaratory relief claim. The plaintiff's arguments in opposition are lengthy and detailed, but unpersuasive and parts are irrelevant. In short, they reflect an incorrect application of the doctrine of in pari delicto and/or overlook the principle that, in pursuing claims that belonged to the debtor pre-petition, the trustee is subject to all defenses that could have been raised against the debtor.

A bankruptcy trustee has the power to pursue, in general, two types of actions – actions brought pursuant to his avoiding powers and actions based on the debtor's pre-petition rights of action that become property of the estate upon the filing of the case. See Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co., 267 F.3d 340, 356 (3rd Cir. 2001). As to the latter, the trustee steps into the shoes of the debtor, taking such rights of action subject to any defenses a defendant would have had against the debtor, including in pari delicto. Grayson Consulting, Inc. v. Wachovia Sec., Inc. (In re Derivium Capital LLC), 716 F.3d 355, 367 (4th Cir. 2013); Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards, 437 F.3d 1145, 1150 (11th Cir. 2006); R.F. Lafferty & Co., 267 F.3d at 356; Sender v. Buchanan (In re Hedged-Investments Assocs.), 84 F.3d 1281, 1285 (10th Cir. 1996). See also In re Bonham Recovery Actions, 229 B.R. 438, 442 (Bankr. D. Alaska 1999) (citations omitted) ["A bankruptcy trustee has long been able to assert a right to a usury claim which belonged to a debtor. The trustee, however, takes the property of the estate under 11 USC § 541(a) subject to any encumbrances or blemishes that existed against the debtor. . . . In the bankruptcy vernacular, the trustee stands in the shoes of the debtor."].

The plaintiff does not contend Count 5 is brought pursuant to its predecessor's avoiding powers, and in fact, it is not. Nor does the plaintiff deny that this is a claim that could have been brought pre-petition by IMG against the defendants. Therefore, if IMG would have been barred by the doctrine of in pari delicto from pursuing the relief requested, then the plan administrator, as successor to the trustee, is also barred.

The doctrine derives from the principle that a court is not to aid either party to an illegal contract. "It is well established that no recovery can be had by either party to a contract having for its object the violation of law. The courts refuse to aid either party, not out of regard for his adversary but because of public policy. Where it appears that a contract has for its object the violation of law, the court should sua sponte deny any relief to either party." Smith v. California Thorn Cordage, Inc., 129 Cal. App. 93, 99-100 (1933) (citation omitted). The Latin "in pari delicto" means "in equal fault"; that is, parties who are in pari delicto are equally at fault. Kelly v. First Astri Corp., 72 Cal. App. 4th 462, 467 n.4 (1999). In such a situation, the courts will leave the parties as they find them, and will not award a recovery to either party. Id. at 481 [on application of doctrine to illegal gambling contracts].

> There is no doubt that the general rule requires the courts to withhold relief under the terms of an illegal contract or agreement which is violative of public policy. It is also true that . . . "when the evidence shows that . . . [a party] in substance seeks to enforce an illegal contract or recover compensation for an illegal act, the court has both the power and duty to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids." These rules are intended to prevent the guilty party from reaping the benefit of his wrongful conduct, or to protect the public from the future consequences of an illegal contract.

Jacobs v. Universal Dev. Corp., 53 Cal. App. 4th 692, 700 (1997), quoting Tri-Q, Inc. v. Sta-Hi Corp., 63 Cal. 2d 199, 218 (1965).

The court has no hesitation in concluding that if IMG had pursued a claim against the defendants for a declaration that they were engaged in a joint venture

or partnership with IMG, the claim would have been barred by the doctrine of in pari delicto. The conduct of IMG's principal, Deepal Wannakuwatte, was such that it landed him in federal prison under a 20-year sentence for operating a large Ponzi scheme. It is difficult for the court to imagine a scenario in which IMG, with the imputation of Wannakuwatte's conduct, could have avoided the application of in pari delicto in an action against any other party based on that party's conduct related to the Ponzi scheme.

The plaintiff does not dispute that Wannakuwatte's conduct should be imputed to IMG for purposes of in pari delicto. Nor does the plaintiff explicitly deny that the trustee, in the declaratory relief claim, stands in the shoes of IMG. Instead, the plaintiff's arguments reflect two main themes: (1) that the plaintiff should be allowed to present evidence that the defendants were especially bad actors, perhaps as bad or worse than Wannakuwatte, and that really culpable wrongdoing should never be shielded; and (2) that the goal of maximizing the recovery of investors in the Ponzi scheme, or at least, of persons who invested through the defendants, plays a key role in the analysis.

The first of these mistakenly assumes that, under the doctrine of in pari delicto, a court must always weigh the relative culpability of the plaintiff and the defendant, an exception that would swallow the rule. The second misses the point that, in pursuing a claim on a debtor's pre-petition right of action, the trustee steps into the shoes of the debtor and is subject to any defenses the defendants would have had in an action brought by the debtor, regardless of the interests of the debtor's creditors in the subsequent bankruptcy case.

The plaintiff's arguments derive in large part from this oft-quoted language:

> The rule that the courts will not lend their aid to the enforcement of an illegal agreement or one against public policy is fundamentally sound. The rule was conceived for the purposes of protecting the public and the courts from imposition. It is a rule predicated upon sound public policy. But courts should not be so enamored with the Latin phrase 'in pari delicto' that they blindly extend the rule to every case where illegality appears somewhere in the transaction. . . . Where, by applying the rule, the public cannot be protected because the transaction has been completed, where no serious moral turpitude is involved, where the defendant is the one guilty of the greatest moral fault, and where to apply the rule will be to permit the defendant to be unjustly enriched at the expense of the plaintiff, the rule should not be applied.

Jacobs, 53 Cal. App. 4th at 699-700.

This language is the key to understanding why the plaintiff's arguments fail. This is not merely a case of illegality appearing somewhere in the transaction, nor one involving no serious moral turpitude, nor one where the defendants might be unjustly enriched at the expense of IMG. (Again, in the case of a bankruptcy trustee pursuing a pre-petition claim of the debtor, the question is what defenses would have prevailed against the debtor, regardless of the impact on the debtor's creditors in the later bankruptcy case.) Nor, probably, is this a case where the defendants are guilty of the greater moral fault, as between them and IMG. But more important, if, as the plaintiff suggests, a court must always weigh the relative culpability of the plaintiff and the defendant in an in pari delicto analysis, the exception would swallow the rule.

A court will neither aid in the commission of a fraud by enforcing a contract, nor relieve one of two parties to a fraud from its consequences, where both are in pari delicto. The doctrine closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.

Jacobs, 53 Cal. App. 4th at 699 (citations omitted). To deny the defendants' motion would be to conclude that a state court would have relieved IMG from the consequences of Wannakuwatte's fraud, however improper may have been the defendants' behavior. This court cannot reach that conclusion.

Finally, the plaintiff claims judgment for the defendants on its declaratory relief claim would affect its other claims because proof of a joint venture or partnership would affect the defendants' good faith and reasonably equivalent value defenses to the fraudulent transfer claims. The granting of this motion will, however, not prevent the plaintiff or the defendants from putting on whatever admissible evidence they wish regarding the plaintiff's remaining claims and the defendants' defenses to them.

For the reasons stated, the court intends to grant the motion. The court is not persuaded the plaintiff would be able to amend the complaint in such a way as to avoid the application of in pari delicto. In this regard, the plaintiff states only that it may be able to allege additional facts to support the conclusion that the defendants were "far more than mere innocent investors in the IMG wholesale business." Plaintiff's Opposition, DN 76, at 23:8-9. As indicated above, such additional allegations would add nothing to the analysis, and absent some further suggestion of allegations that would change this result, the court intends to grant the motion without leave to amend.

The court will hear the matter.

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1 The plaintiff is the successor in interest to the chapter 11 trustee, who commenced this adversary proceeding.

4.	17-23436-D-7	RENEE DRUSYLLA	MOTION TO DISMISS ADVERSARY
	17-2163	FF-1	PROCEEDING
	TORRES V. DRUSYLLA		9-20-17 [8]

Final ruling:

This adversary proceeding has been stayed by order dated September 28, 2017. Thus, this motion is removed from calendar subject to being renewed by the moving party when the stay is lifted. No appearance is necessary.

5. 17-23844-D-7 AP-1 JPMORGAN CHASE BANK, N.A. VS.
HECTOR GUILLEN AND OLGA HURTADO
MOTION FOR RELIEF FROM AUTOMATIC STAY
9-19-17 [17]

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 debtors received their discharge on September 18, 2017 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

6. 15-27561-D-7 15-2244 GATEWAY ONE LENDING & FINANCE V. BARRY
SIMONAE BARRY TJP-5
CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-17-17 [87]

ADVERSARY CASE CLOSED:
12/02/2016

Tentative ruling:

This is the objection of judgment creditor Gateway One Lending & Finance, LLC ("Gateway") to the debtor's claim of exemption of her earnings. The hearing was continued to permit the judgment debtor to file opposition but she has not done so. For the following reasons, the objection will be sustained and the claim of exemption will be disallowed.

The debtor has claimed all of her earnings as exempt and has indicated on her claim of exemption she is not willing for any portion to be withheld. She has filed the required financial statement listing her earnings and the living expenses of herself and her two daughters, who, according to the form, depend in whole or in part on her for support. According to the financial statement, the debtor's gross monthly pay is $3,397.32 and her tax withholdings are $390.44. She also deducts "before tax deductions" and "after tax deductions" totaling $115.84 per month. Thus, she lists her total take-home pay as $2,891.04 and her total household expenses as $3,099.92.

California law provides that, with exceptions not applicable here, "the portion of the judgment debtor's earnings that the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from [garnishment]." Cal. Code Civ. Proc. § 706.051(b) (emphasis added). As this language suggests, the person claiming the exemption – that is, the judgment debtor – has the burden of proof. Cal. Code Civ. Proc. § 703.580(b); In re Tallerico, 532 B.R. 774, 780 (Bankr. E.D. Cal. 2015). After the debtor filed her claim of exemption and financial statement, Gateway raised issues with respect to several specific amounts in the financial statement and, at a hearing at which the debtor appeared, the court continued the matter for the express purpose of giving the debtor the opportunity to file a

written response, along with further evidence. The debtor, however, has filed nothing further and the court therefore concludes she has failed to meet her burden of proof.

Accordingly, the objection will be sustained and the debtor's claim of exemption will be disallowed, such that Gateway will be permitted to receive 25% of her disposable earnings.[1] For the purpose of wage garnishment, "disposable earnings" means "the portion of an individual's earnings that remains after deducting all amounts required to be withheld by law." Cal. Code Civ. Proc. § 706.011(a). The debtor's tax withholdings, $390.44, are required to be withheld by law, and are thus deducted from her gross wages, $3,397.32, before making the 25% calculation. The debtor has not provided enough information for the court to determine what the "before tax deductions" and the "after tax deductions" are, and thus, to determine whether they are required to be withheld by law. The court will leave the issue to the debtor's employer – to deduct from gross earnings the amounts required by law to be withheld and to pay Gateway 25% of the difference per pay period. The precise calculations will be made by the debtor's employer and will depend on the specific amount of the debtor's gross earnings for the pay period less amounts required by law to be withheld for that pay period, and the debtor's employer will pay Gateway 25% of the difference each pay period.

The court will hear the matter.

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1 Under California law, the maximum amount of the disposable earnings of a judgment debtor that may be garnished is the lesser of 25% of the debtor's disposable earnings or an amount based on a calculation involving the state minimum wage. Cal. Code Civ. Proc. 706.050(a). In this case, the lesser of these amounts is the 25% figure, and that is the amount Gateway is seeking to garnish – "25% allowable by law per pay period." Gateway's Obj., DN 87, ¶ 6.

7.	11-46172-D-12 17-2156 MISHRA ET AL V. WELLS FARGO BANK, N.A.	VIRENDA/SUMAN MISHRA DWE-1	MOTION TO DISMISS ADVERSARY PROCEEDING 9-29-17 [40]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

8.	11-46172-D-12 17-2156 MISHRA ET AL V. WELLS FARGO BANK, N.A.	VIRENDA/SUMAN MISHRA PGM-2	CONTINUED MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR MOTION FOR ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE PROHIBITING DEFENDANT FROM SELLING REAL PROPERTY PENDING TRIAL 9-12-17 [22]

9. 17-25978-D-7 LAILA OSMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 9-22-17 [9]
TOYOTA MOTOR CREDIT CORPORATION VS.
Final ruling:

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

10. 12-40279-D-7 MARTIN/ANGELA WALTERS — MOTION TO AVOID LIEN OF DISCOVER BANK
MS-1 — 9-18-17 [59]
Final ruling:

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

11. 12-40279-D-7 MARTIN/ANGELA WALTERS — MOTION TO AVOID LIEN OF DISCOVER BANK
MS-2 — 9-18-17 [64]
Final ruling:

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

12. 15-29890-D-7 GRAIL SEMICONDUCTOR — MOTION FOR COMPENSATION BY THE LAW OFFICE OF EVERSHEDS SUTHERLAND (INTERNATIONAL), LLP FOR JAMES LEADER, SPECIAL COUNSEL
DNL-32 — 9-22-17 [880]
Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

13. 15-29890-D-7 GRAIL SEMICONDUCTOR
16-2088 MRH-1
CARELLO V. STERN ET AL

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
8-26-16 [104]

Final ruling:

The hearing on this motion is continued to November 8, 2017 at 10:00 a.m. No appearance is necessary.

14. 17-22410-D-7 SHELLY PINA
NUU-3

MOTION TO AVOID LIEN OF CACH, LLC
10-11-17 [32]

15. 12-37314-D-7 MARK/ROXANNE WATSON
GEL-4

MOTION TO AVOID LIEN OF AMERICAN GENERAL FINANCIAL SERVICES, INC.
10-11-17 [45]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by American General Financial Services, Inc. ("American General"). The motion will be denied because the moving parties failed to serve American General in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served American General (1) at a street address with no attention line; and (2) through the attorney who obtained American General's abstract of judgment. The first method was insufficient because American General was required to be served to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3). The second method was insufficient because there is no evidence the attorney is authorized to receive service of process on behalf of American General in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).[1]

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

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1 This is the debtors' second motion to avoid this lien. The first motion was denied because of the same service defect addressed here and because of a notice defect. With this new motion, the notice defect has been corrected, but the proof of service is identical to the first except for the hearing date and the signature date.

16. 12-37314-D-7 GEL-5 — MARK/ROXANNE WATSON — MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA INC. 10-11-17 [51]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Beneficial California, Inc. ("Beneficial"). The motion will be denied because the moving parties failed to serve Beneficial in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Beneficial (1) at a post office box address and a street address, both with no attention line; and (2) through the attorney who obtained Beneficial's abstract of judgment. The first method was insufficient because Beneficial was required to be served to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3). The second method was insufficient because there is no evidence the attorney is authorized to receive service of process on behalf of Beneficial in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).[1]

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

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1 This is the debtors' second motion to avoid this lien. The first motion was denied because of the same service defect addressed here and because of a notice defect. With this new motion, the notice defect has been corrected, but the proof of service is identical to the first except for the hearing date and the signature date.

17. 16-22230-D-7 MPD-6 — NORMAN/CHERI RYAN — MOTION FOR COMPENSATION FOR MICHAEL P. DACQUISTO, TRUSTEE'S ATTORNEY 10-3-17 [78]

18. 16-22230-D-7 MPD-7 — NORMAN/CHERI RYAN — MOTION FOR COMPENSATION FOR JOHN W. REGER, CHAPTER 7 TRUSTEE 10-3-17 [88]

19. 17-24444-D-11 RAMON LOPEZ
GMW-4

MOTION TO USE CASH COLLATERAL
10-6-17 [88]

20. 17-24444-D-11 RAMON LOPEZ
GMW-5

MOTION TO EMPLOY LARRY KILLIAN AS BROKER(S)
10-11-17 [96]

21. 16-25460-D-7 GABRIEL/CHRISTINA PAULL
WLG-1

MOTION TO COMPEL ABANDONMENT
10-10-17 [59]

22. 17-25466-D-7 JOSHUA/CHRISTINA VANWINKLE
SW-1
A-L FINANCIAL CORPORATION
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-10-17 [13]

23. 15-29890-D-7 GRAIL SEMICONDUCTOR
MPD-1
WILLIS E. HIGGINS, ET AL.
VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ORDER THE AUTOMATIC STAY DOES NOT APPLY
3-1-17 [579]

24. 17-24895-D-7 ROSS/JEANA HARTMAN

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-20-17 [10]

25. 11-46172-D-12 VIRENDA/SUMAN MISHRA
17-2156
MISHRA ET AL V. WELLS FARGO BANK, N.A.

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-17-17 [1]