UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 31, 2016 at 10:00 a.m.

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1. 14-31810-A-7 MAHMOOD DEAN — MOTION FOR
15-2050 MJ-1 — PARTIAL SUMMARY JUDGMENT
JOHNSON ET AL V. DEAN — 9-15-16 [48]

Tentative Ruling: The motion will be denied.

The plaintiffs Brad Johnson and Monte Johnson seek summary judgment on their 11 U.S.C. § 523(a)(2)(B) claim against the defendant and debtor in the underlying bankruptcy case, Mahmood Dean.

The defendant opposes the motion.

Summary judgment is appropriate when there exists "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Supreme Court discussed the standards for summary judgment in a trilogy of cases, Celotex Corporation v. Catrett, 477 U.S. 317, 327 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

In a motion for summary judgment, the moving party bears the initial burden of persuasion in demonstrating that no genuine issues of material fact exist. See Anderson at 255. A genuine issue of material fact exists when the trier of fact could reasonably find for the non-moving party. Id. at 248. The court may consider pleadings, depositions, answers to interrogatories and any affidavits. Celotex at 323.

11 U.S.C. § 523(a)(2) provides that an individual is not discharged "from any debt for money . . . , to the extent obtained by- (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;" or "(B) use of a statement in writing- (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money . . . reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive."

The section 523(a)(2)(B) requirements have been reworded by the Ninth Circuit as follows: (1) a representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the time to be false, (4) that the debtor made with the intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was reasonable, and (7) that damage proximately resulted from the representation. Candland v. Insurance Co. of N. America (In re Candland), 90 F.3d 1466, 1469 (9th Cir. 1996).

The evidence proffered in the plaintiffs' only supporting declaration of Brad Johnson, which doubles as a statement of undisputed facts, cannot result in a

judgment as a matter of law on the section 523(a)(2)(B) claim. Docket 49.

For example, in an effort to establish that the defendant knew the representations to be false at the time he made them, the motion record points to evidence of the defendant knowing the representations to be false *before* and *after* he made them. Yet, the element of the claim calls for the defendant to have known the representations to be false *at the time* he made them. Docket 49 at 2-4.

Further, as to the intent to deceive element, the motion asserts that:

"the defendant admits that when he represented that he had a net worth of $17,146,152 and owned a 1/7 interest in the Dean Family Trust . . . worth $14,700,000 . . . , he made the representations with the intent to induce the plaintiffs to extend credit to him."

Docket 49 at 5.

However, the defendant seeking to induce reliance in the plaintiffs is not the same as seeking to deceive them. Seeking to induce reliance by his representations does not establish intent to deceive because there is no direct evidence of the defendant knowing the falsity of the representations at the time he makes them.

Importantly, intent to deceive, along with knowledge of falsity at the time the representations are made, can be proven only by circumstantial evidence. See, e.g., Poller v. Columbia Broad. Sys., Inc., 368 U.S. 464, 473 (1962); see also Maffei v. N. Ins. Co. of New York, 12 F.3d 892, 898 (9th Cir. 1993); Morgan Creek Prods., Inc. v. Franchise Pictures LLC (In re Franchise Pictures LLC), 389 B.R. 131, 144-45 (Bankr. C.D. Cal. 2008).

And, assessing circumstantial evidence includes assessing the veracity of witness testimony, especially when factual characterizations are involved. To assess the veracity of witness testimony and adjudicate state of mind and/or intent issues, the court must have the opportunity to observe, listen to and assess the demeanor, appearance, mannerism, and speaking intonation of the witnesses while in live testimony. Declaration testimony denies such opportunity to the court.

The need for live testimony is even more true where, as here, the defendant has vehemently denied the elements of 11 U.S.C. § 523(a)(2)(B), including intent to deceive. The defendant contends that there was a typographical error in representing his net worth ($14,700,000 represented vs. $1,470,000 actual). In this case, the court cannot determine state of mind, motive or intent without live testimony. Accordingly, this motion will be denied.

2. 15-20014-A-7 SAQIB ABBAS
15-2124 CDH-1
PEGASUS INFOTECH INC. V. ABBAS

MOTION TO DISMISS FOURTH CLAIM SEEKING A DENIAL OF DISCHARGE
9-21-16 [29]

Tentative Ruling: The motion will be denied without prejudice.

The plaintiff, Pegasus Infotech, Inc., seeks dismissal with prejudice of an objection to discharge claim under section 727, based on a settlement agreement between the plaintiff and the defendant and debtor in the underlying bankruptcy case, Saqib Abbas.

Fed. R. Civ. P. 41(a)(2), as made applicable here via Fed. R. Bankr. P. 7041, provides that "Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice."

Fed. R. Bankr. P. 7041, via which Fed. R. Civ. P. 41 applies here, provides that:

"Rule 41 F.R.Civ.P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper."

While the motion appears to comply with the requirements of Fed. R. Bankr. P. 7041, the sought dismissal is based on a settlement agreement between the parties and the motion says little or nothing about the terms of the settlement agreement.

As the court is not in the business of selling bankruptcy discharges, it will not allow for the dismissal of a section 727 claim pursuant to a settlement agreement, without disclosure of the terms of the settlement. Neither the court, nor parties in interest are able to determine what is the bargained for consideration for the dismissal of the claim. Accordingly, the motion will be denied.

3.	10-36150-A-11 16-2005 FRANK V. CHASE HOME FINANCE	KARIN FRANK KYL-1	MOTION TO QUASH SERVICE OF PROCESS AND TO SET ASIDE ENTRY OF DEFAULT 9-21-16 [56]

Tentative Ruling: The motion will be granted in part.

The movant, JPMorgan Chase Bank, successor in interest to Chase Home Finance, L.L.C., requests the court to vacate the default entered against Chase Home Finance and to quash the service of the summons and complaint on Chase Home Finance.

The plaintiff, Karin Frank, who is also the debtor in the underlying chapter 11 case, opposes the motion, contending that Chase Home Finance was properly served.

The plaintiff ignores the fact that Chase Home Finance no longer exists and that she has sued the wrong person. The plaintiff's complaint names Chase Home Finance. It does not name the movant. The court has ample evidence in the record that Chase Home Finance ceased to exist approximately five years, when it merged into the movant. Dockets 1 & 59.

And, the plaintiff has never served the movant, *i.e.*, JPMorgan Chase Bank, in this proceeding. All certificates of service name Chase Home Finance as the person being served with the summons and complaint. Dockets 6, 7, 9, 22, 23, 24. Even when a certificate of service does not expressly refer to Chase Home Finance, it refers to the "defendant" in this proceeding. See Docket 9. Prior

to the filing of this motion, Chase Home Finance was the only defendant in this proceeding. See Docket 1.

The court will not permit the plaintiff to serve and sue the movant by serving and suing Chase Home Finance. As the successor in interest to Chase Home Finance and as an insured depository institution (defined by section 3 of the FDIA), the movant is entitled to be named as a defendant in this proceeding and served pursuant to Fed. R. Bankr. P. 7004(h). This has not been done here.

In other words, regardless of whether Chase Home Finance was correctly served with the summons and complaint, the default entered against Chase Home Finance will be vacated because such entity is no longer in existence. Once again, the plaintiff named, served and sued the wrong person. The motion will be granted in part.

4.	10-36150-A-11 16-2005 FRANK V. CHASE HOME FINANCE	KARIN FRANK MLA-1	MOTION FOR ENTRY OF DEFAULT JUDGMENT 6-20-16 [35]

Tentative Ruling: The motion will be denied.

The court continued the hearing on this motion from October 3, 2016.

The plaintiff, Karin Frank, the debtor in the underlying chapter 11 case, seeks entry of a default judgment against the defendant, Chase Home Finance, L.L.C., requesting damages of $167,251.05, which includes $8,629.78 in attorney's fees. This motion concerns solely the property located on Shadygrove Street.

As the court is vacating the default entered against Chase Home Finance, in connection with the related motion to vacate and quash by JPMorgan Chase Bank also being heard on this calendar, (DCN KYL-1), this motion will be denied.

5.	15-29072-A-7 16-2023 STATE FARM MUTUAL AUTOMOBILE INS. CO. V. CECH	AUDREY CECH	MOTION FOR SUMMARY JUDGMENT 9-7-16 [33]

Final Ruling: The motion will be dismissed.

There is no proof of service in the record for the movant's amended notice of hearing (titled "amended notice of motion"), setting the October 31, 2016 hearing on this motion. Docket 33. The only proof of service located by the court, filed on September 6, 2016, does not list the amended notice of hearing as one of the documents served by the movant. Docket 31. It lists only a "notice of motion," also filed on September 6, 2016.

Next, the latest notice of hearing (*i.e.*, "amended notice of motion" – Docket 33) violates Local Bankruptcy Rule 9014-1(d)(4), which requires the notice to indicate whether and when written opposition must be filed. The subject notice does not indicate whether and when written oppositions must be filed. Docket 33.

Further, the motion does not comply with Local Bankruptcy Rules 9014-1(d)(3), which requires that a motion be accompanied by a *separate* notice of hearing. The motion is not accompanied by a separate notice of hearing. The amended notice and amended motion are one and the same document. Docket 33.

Finally, the motion violates Local Bankruptcy Rule 9014-1(c) because the motion papers do not contain a unique docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

6. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION TO USE CASH COLLATERAL, REPLACEMENT LIENS, AND ADEQUATE PROTECTION PAYMENTS
FWP-6 — 7-18-16 [170]

Tentative Ruling: The motion will be conditionally granted.

The chapter 11 trustee seeks approval to use the cash collateral of several creditors secured by three shopping centers and six residential rental properties for the period of November 1, 2016 through January 31, 2017. Docket 356.

The United States Trustee filed an opposition to the motion objecting to language in the proposed order accompanying the motion, which states that trustee fees " may be transferred by the Trustee to a segregated reserve account maintained by the Trustee." Docket 361, ¶ 8. The opposition requests that the chapter 11 trustee should submit a supplemental declaration to identify the financial institution where the fee reserve accounts are maintained and to state whether the chapter 11 trustee should comply with 11 U.S.C. § 345(b).

11 U.S.C. § 363(c)(2)(B), (c)(3), (e) provides that, when the secured claimants with interest in the cash collateral do not consent, after notice and a hearing, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

The proposed use of cash collateral will preserve the going concern of the real properties, allowing the trustee to continue operating them as rentals, thus permitting eventual liquidation at a maximum value. This is in the best interest of the estate and the creditors.

The three shopping centers involved in this motion include:

- on Stockton Boulevard in Sacramento, California (no voluntary liens, encumbered solely by the United States' $3,029,412.64 criminal restitution judgment lien);

- in West Sacramento, California (valued at $4.3 million and subject to an approximately $2.925 million first priority claim held by Fairview Holdings II, L.L.C. and United States' second priority criminal restitution judgment);

- on Power Inn Road in Sacramento, California (valued at $1.2 million and subject to an approximately $650,000 first priority claim held by JP Morgan Chase Bank and United States' second priority criminal restitution judgment).

The proposed budget here is similar to the budget pursuant to which the court authorized prior use of cash collateral to the estate. Dockets 109, 150, 174, 203. The trustee proposes to make adequate protection payments to the shopping center secured creditors, up to $2,000 a month and to the extent proceeds are available, and to grant them replacement liens. The prior budget was up to

$5,000 a month, however, it appears that some of the properties have recently become vacant, with only two properties generating rents.

The trustee anticipates that the secured creditors will stipulate to the proposed cash collateral use.

Given that the secured creditors will be stipulating to the cash collateral use and given that the proposed budget is substantially similar to the budget of the estate's immediately prior cash collateral request, the motion will be granted as to the three shopping centers. Dockets 150 & 174.

As to the residential properties, they are all in Sacramento, California and include:

- 130 Prairie Circle,
- 180 Prairie Circle,
- 186 Prairie Circle,
- 209 Prairie Circle (rented at $825 a month),
- 5924 Pony Trial Way, and
- 148 Estes Way (rented at $1,000 a month).

Thus far, the trustee has discovered that JP Morgan Chase Bank, Bank of America and The Bank of New York Mellon are each secured by one or more of the residential properties. The trustee still appears to be investigating who are the other creditors, if any, secured by the residential properties. The trustee requests authority to use as necessary up to $2,000 a month per residential property in cash collateral, to maintain the residential properties.

The court will grant the request of the United States Trustee and require the chapter 11 trustee to submit a supplemental declaration to identify the financial institution where the fee reserve accounts are maintained and to state whether the chapter 11 trustee should comply with 11 U.S.C. § 345(b).

Subject to hearing from any creditors secured by the residential properties and a supplemental declaration being filed by the chapter 11 trustee, the court will authorize the requested use of cash collateral from those properties.

By authorizing cash collateral use, the court is not approving the compensation of professionals of the estate, even if such compensation is accounted for in the cash collateral budget.

7. 16-21585-A-11 AIAD/HODA SAMUEL — OBJECTION TO CLAIM
RJ-2
VS. BRAKE MASTERS HOLDINGS SAC, INC. — 9-19-16 [308]

Tentative Ruling: The objection will be overruled.

The debtors object to the proof of claim filed by Brake Masters Holdings SAC, Inc., POC 18, asserting that it is untimely. See 11 U.S.C. § 502(b)(9). The deadline for filing proofs of claim in this case was July 11, 2016, and the claim was filed on September 6, 2016.

The claimant filed an opposition to the objection asserting that the claim should be allowed because (1) the claimant did not have timely notice of the bankruptcy case or the claims bar date; (2) documents filed in state court, oral and written communications with the debtors' and trustee's counsel, and

July 5th letter constitute an informal proof of claim; and (3) the chapter 11 trustee has stipulated to allow the claim as timely. Docket 353.

The objection will be overruled for improper notice and lack of standing. The debtors did not provide correct notice. The objection was set for hearing on 42 days notice to the claimant in violation of Local Bankruptcy Rule 3007-1(c)(1)(I), which requires at least 44 days' notice.

Also, the court is not convinced that the debtors have standing to bring the objection. The debtors have not demonstrated that allowance of the claim will cause injury in fact to them. See In re An-Tze Cheng, 308 B.R. 448, 454 (B.A.P. 9th Cir. 2004).

Improper notice and lack of standing aside, the court finds no basis for sustaining the objection.

The standard for allowing the filing of a tardy proof of claim is found in Fed. R. Bankr. P. 9006(b)(1). In re Enron, 419 F.3d 115, 121 (2nd Cir. 2005). That rule provides in relevant part that "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." The determination of excusable neglect is an equitable consideration, 'taking account of all relevant circumstances surrounding the party's omission.' Id. at 122 (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993). Courts must consider four factors: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. In re Enron, 419 F.3d at 122 (citing Pioneer Inv. Servs. Co., 507 U.S. at 395). The burden of proving excusable neglect lies with the claimant. In re Enron, 419 F.3d at 121.

The court concludes that the claimant has established excusable neglect. The debtors appear to have concealed their bankruptcy case from the claimant. The debtors filed their bankruptcy case on March 15, 2016, the same day that a state court issued a judgment in favor of the claimant and against the debtors. The claimant asserts that it did not learn of the debtors' bankruptcy filing until July 27, 2016. Neither the debtors nor their attorneys ever provided notice of the bankruptcy filing to the claimant even while litigation between the parties proceeded in state court.

The debtors have not addressed or provided a reason for their failure to notice the claimant of their bankruptcy case or schedule the debt in their bankruptcy petition. Rather, the objection argues that the lapse of one month from time that the claimant learned of the bankruptcy and the date that the proof of claim was filed is inexcusable. The court disagrees.

Counsel for the claimant contacted counsel for the trustee two days after learning of the debtors' bankruptcy case. See Dockets 340-41. They discussed potentially settling the pending appeal of the state court judgment. On July 5, 2016, counsel for the claimant sent a letter to counsel for the trustee addressing multiple issues and advising that the claimant would file a proof of claim. Docket 344, Ex. K. Counsel for the claimant learned of the July 11 claims bar date from the trustee's counsel on August 24, 2016. Docket 342, at

5. In that conversation, counsel for the trustee stated that the trustee would stipulate to an allowed claim for the movant due to the circumstances including lack of notice. Id. The movant prepared a draft stipulation and draft proof of claim and sent it to counsel for the trustee for approval on August 29, 2016. Id. The chapter 11 trustee and the claimant have entered into a stipulation to allow the claim as timely. See Dockets 340-45.

The evidence suggests that the claimant has acted in good faith and that the debtors have not. Based on the circumstances, the lapse of one month between learning of the bankruptcy case and filing a proof was not an excessive delay and does not impact judicial proceedings. The claimant has established excusable neglect for filing the claim after the claims bar date.

8. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
WLB-1
BRAKE MASTERS HOLDINGS SAC, INC. VS. — 9-8-16 [262]

Tentative Ruling: The motion will be granted.

The movant, Brake Masters Holdings SAC, Inc., seeks both prospective and retroactive relief from stay with respect to its state court judgement against the debtors.

The debtors filed a state court complaint against the movant on December 20, 2011. On March 15, 2016 the state court rendered a judgment after trial finding in favor of the movant, and against the debtors, on all issues. Docket 268, Ex. D (Notice of Entry of Judgment filed March 29, 2016 with attached copy of March 15, 2016 Judgment After Court Trial in Sacramento County Superior Court Case No. 34-2011- 00115950). That same day, March 15, the debtors filed this chapter 11 bankruptcy case.

Steven Benjamin, counsel for the movant in the state court action, filed a declaration accompanying the motion. Docket 266. Mr. Benjamin testifies that he never received notice of the debtors' bankruptcy filing from the debtors or their attorneys and did not become aware of the bankruptcy case until July 27, 2016 after conducting an internet search of the debtor's name. The court notes that the debtors did not schedule the movant as a creditor. See Dockets 5, 65, 66.

The movant seeks retroactive stay relief as to all post-petition actions in the state court litigation that occurred before July 27, 2016, the date that the movant became aware of the bankruptcy filing. Specifically,(1) the movant's post-judgment Memorandum of Costs filed March 30, 2016, (2) the state court's subsequent posting of post-judgment costs in the amount of $4,592.04 on April 21, 2016, and (3) the movant's post-judgment fee motion filed on May 20, 2016.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are

employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

The court will grant retroactive relief from stay as to all actions taken by the movant in the state court action post-petition up to July 27, 2016. The court is convinced that the movant first learned of the bankruptcy case on July 27. The movant's delay in learning of the bankruptcy case is attributable to the debtors' concealment of their bankruptcy. Additionally, the court would have granted relief from the automatic stay had the movant applied in time in order for the state court litigation to be finalized. To deny retroactive stay relief would prejudice the movant.

The court will grant prospective relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) so that the movant may prosecute its motions for post-judgment attorneys' fees and costs. If and when the movant obtains a post-judgment award against the debtors, the movant may amend its proof of claim in this case. It may not otherwise enforce or collect on any judgment.

The court is not persuaded by the debtors' opposition. First, the opposition does not address the movant's assertion that they concealed their bankruptcy from the movant. Second, the opposition is fundamentally irrelevant as it does not address the issue at hand - relief from the automatic stay. Rather, the opposition argues that the trustee should abandon the debtors' interest in a pending appeal of the state court judgment. A request for the estate to abandon property should be brought by motion seeking abandonment that is served on all parties in interest, not by opposition to a motion for relief from the automatic stay that is served only on the creditor seeking relief from the automatic stay.

No fees and costs are awarded because the movant is not an over secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

9. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION TO APPROVE STIPULATION 10-1-16 [340]
WLB-2

Tentative Ruling: The motion will be granted.

The movant, Brake Masters Holdings SAC, Inc., seeks approval of a stipulation between the estate and the movant to allow their claim, POC 18, as timely. The deadline for filing proofs of claim in this case was July 11, 2016, and the claim was filed on September 6, 2016.

The debtors have filed an opposition to the motion arguing that the claim is inexcusably untimely. Docket 364. The opposition points to a typographical error in a declaration accompanying the motion: "The Benjamin Declaration states that the proposed stipulation was sent to Jason Rios [counsel for the trustee] on August 29th. It is obvious that it was sent one month later on September 29th." Docket 364, at 2. The debtors also urge the trustee to abandon a pending appeal of a state court judgment, which is the basis of the proof of claim at issue.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a

compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986).

The standard for allowing the filing of a tardy proof of claim is found in Fed. R. Bankr. P. 9006(b)(1). In re Enron, 419 F.3d 115, 121 (2nd Cir. 2005). That rule provides in relevant part that "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." The determination of excusable neglect is an equitable consideration, 'taking account of all relevant circumstances surrounding the party's omission.' Id. at 122 (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993). Courts must consider four factors: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. In re Enron, 419 F.3d at 122 (citing Pioneer Inv. Servs. Co., 507 U.S. at 395). The burden of proving excusable neglect lies with the claimant. In re Enron, 419 F.3d at 121.

The court concludes that the circumstances favor approving the stipulation and allowing the claim as timely. The debtors appear to have willfully concealed their bankruptcy case from the claimant. The debtors filed their bankruptcy case on March 15, 2016, the same day that a state court issued a judgment in favor of the claimant and against the debtors. The claimant asserts that it did not learn of the debtors' bankruptcy filing until July 27, 2016 via an internet search. Neither the debtors nor their attorneys ever provided notice of the bankruptcy filing to the claimant even while litigation between the parties proceeded in state court. The debtors have not presented evidence that addresses their failure to notice the claimant of their bankruptcy case or schedule the debt in their bankruptcy petition.

In contrast, the evidence establishes that the claimant acted in good faith. Counsel for the claimant contacted counsel for the trustee two days after learning of the debtors' bankruptcy case. See Dockets 340-41. They discussed potentially settling the pending appeal of the state court judgment. On July 5, 2016, counsel for the claimant sent a letter to counsel for the trustee addressing multiple issues and advising that the claimant would file a proof of claim. Docket 344, Ex. K. Counsel for the claimant learned of the July 11 claims bar date from the trustee's counsel on August 24, 2016. Docket 342, at 5. In that conversation, counsel for the trustee stated that the trustee would stipulate to an allowed claim for the movant in the bankruptcy due to the circumstances including lack of notice. Id. The movant prepared a draft stipulation and draft proof of claim, and sent it to counsel for the trustee for approval on August 29, 2016. Id.

Based on the circumstances, the lapse of one month between learning of the bankruptcy case and filing a proof was not an excessive delay and does not impact judicial proceedings. The court is persuaded that the claimant has established excusable neglect for the untimely filing of its proof of claim. Further, approval of the stipulation allowing the claim as timely will avoid the delay and expense of litigating the issue. Therefore, the court concludes the stipulation to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976).

The court is not persuaded by the debtors' opposition. As explained above, the movant has established excusable neglect for the untimely filing of its proof of claim. The typographical error in the declaration accompanying the motion is harmless. The opposition's request for the trustee to abandon an appeal is not relevant to the issue at hand.