UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 8, 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.

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1. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION TO STRIKE DMC-910-11-17 [69]
15-2122 MCFARLAND V. CARTER ET AL

2. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION FOR PROTECTIVE ORDER IWC-39-28-17 [57]
15-2122 MCFARLAND V. CARTER ET AL

Final ruling:

The motion has been resolved by stipulation of the parties and an order has been entered allowing the defendants to withdraw this motion. As such, the matter is removed from calendar. No appearance is necessary.

3. 17-20731-D-11 CS360 TOWERS, LLC — CONTINUED MOTION TO USE CASH COLLATERAL
TBG-2 — 2-15-17 [12]

Final ruling:

Pursuant to the stipulated order entered on November 6, 2017 the hearing on this motion is continued to December 6, 2017 at 10:00 a.m. No appearance is necessary on November 8, 2017.

4. 17-24937-D-7 ROSEANNE RESTUA — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 10-3-17 [13]
WELLS FARGO BANK, N.A. VS.

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'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.

5. 17-20038-D-11 LANE FAMILY LIMITED PARTNERSHIP NO. ONE — CONTINUED MOTION TO DISMISS CASE AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY
MBG-4 — 8-29-17 [130]
FIRST COMMUNITY BANK VS.

6. 17-24546-D-7 DALE/LORI LYNCH — MOTION TO SELL AND/OR MOTION FOR WAIVER OF 14 DAY STAY PERIOD
JMH-1 — 10-8-17 [17]

7. 17-25546-D-7 TERESA BARCENAS

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
8-22-17 [5]

8. 17-25352-D-7 BRETT/ALEXANDRA MEDICI
PP-1
PODS ENTERPRISES, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
10-11-17 [42]

9. 17-22056-D-11 JAMES MCCLERNON

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
3-29-17 [1]

DUPLICATE ENTRY

10. 17-22056-D-11 JAMES MCCLERNON

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
3-29-17 [1]

11. 17-22056-D-11 JAMES MCCLERNON
WT-3
MCCLERNON GENERAL ENGINEERING VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-9-17 [98]

12. 16-28158-D-7 KENNITH/HEIDI DRURY
EJS-1

MOTION TO AVOID LIEN OF WINDSET
10-4-17 [32]

Tentative ruling:

The court will use this hearing as a status conference and to set a briefing schedule.

13. 14-20064-D-7 GLENN GREGO
JHW-1
FORD MOTOR CREDIT COMPANY, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-6-17 [707]

14. 12-23265-D-7 DAVID DESSEM
RJM-3

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
10-4-17 [23]

Final ruling:

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

15. 11-27772-D-7 EDUARDO/INES CRUZ — MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
MGG-2 — 10-10-17 [35]

Tentative ruling:

This is the debtors' motion to determine an act to have been taken in violation of the automatic stay, and therefore, to determine that act is void. The debtors' evidence demonstrates that on September 23, 2010, Bryan Harris obtained a judgment in the amount of $1,200 against debtor Eduardo Cruz. Mr. Harris recorded an abstract of judgment on April 5, 2011, seven days after the debtors filed this chapter 7 case. The debtors listed Mr. Harris on their Schedule F as being owed $1,200; the debtors received their discharge on July 11, 2011.

Inasmuch as the judgment was entered several months prior to the debtors' bankruptcy filing, it is clearly on account of a pre-petition debt. The debtors testify they have begun trying to refinance their mortgage and "[a]ll attempts to contact Creditor and informally resolve the present issue have been unsuccessful." Debtors' Decl., DN 37, ¶ 10. Therefore, they seek an order determining the recording of the abstract of judgment was an act in violation of the automatic stay, and the recording is therefore void. The debtors are expressly not seeking sanctions against Mr. Harris at this time.

Because the recording of the abstract of judgment was an act taken post-petition on account of a pre-petition debt, the act violated the automatic stay and the recording is void. In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992). Accordingly, the motion will be granted. The court will issue a minute order or the debtors' counsel may submit a proposed order.

The court will hear the matter.

16. 16-27672-D-11 DAVID LIND — CONTINUED MOTION TO APPROVE LOT LINE ADJUSTMENT AGREEMENT
DNL-5 — 8-16-17 [205]

17. 11-46172-D-12 VIRENDA/SUMAN MISHRA — MOTION TO DISMISS ADVERSARY PROCEEDING
17-2156 DWE-2 — 10-4-17 [42]
MISHRA ET AL V. WELLS FARGO BANK, N.A.

Tentative ruling:

This is the motion of defendant Wells Fargo Bank, N.A. (the "Bank") to dismiss the complaint of the plaintiffs, who are the debtors in the underlying chapter 12 case (the "debtors"), pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by

Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. The debtors have filed opposition. For the following reasons, the motion will be conditionally granted, with leave to amend.

In ruling on a Rule 12(b)(6) motion, a court "accept[s] as true all facts alleged in the complaint, and draw[s] all reasonable inferences in favor of the plaintiff." al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Newcal Indus., Inc. v. Ikon Office Solution, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court assesses whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd, 580 F.3d at 949, citing Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

By their complaint, the debtors allege the Bank's claim for pre-petition arrears and ongoing mortgage payments was paid through their confirmed chapter 12 plan, that they have completed the plan and received a chapter 12 discharge, and that the Bank has "failed to honor the confirmed plan, and apply the payments received under the confirmed plan properly." Debtors' Complaint, filed Aug. 17, 2017 ("Compl."), at 2:2-3. Instead, the debtors allege, the Bank wrongfully commenced foreclosure proceedings. Thus, the debtors allege the Bank has violated the plan and the discharge order.

The Bank contends, among other things, that the complaint includes no details as to the payments made under the plan that the Bank has allegedly failed to properly credit; that is, that the complaint is too conclusory to withstand a Rule 12(b)(6) motion. The court agrees, and thus, need not address the Bank's other arguments. The complaint alleges that the confirmed plan "provides that the 1st deed of trust shall receive regular on-going monthly payments [totaling] $52,107.04, and a dividend of $4,672.52, each month to cure the arrears over the life of the plan." Compl., ¶ 10.[1] Aside from alleging the Bank "has failed to credit payments in the manner required by the plan" (id., ¶ 15), the text of the complaint contains no information about what payments were made through the plan, how they were credited by the Bank, or how they should have been credited.

The debtors have, however, submitted a copy of the trustee's payment history for the entire case as an exhibit to their complaint.[2] That document contains an accounting that contradicts the allegations in the complaint. According to the Disbursement History that is part of trustee's payment history, a total of $4,320 was paid to Wachovia under the plan and a total of $52,107.04 was paid to Wells Fargo Home Mortgage.[3] The entries reflecting those payments are listed as payments on account of the same claim, Claim No. 15. On the trustee's Claim Records that are also part of the payment history, Claim No. 15 is the claim of Wells Fargo Home Mortgage described as an "ongoing mortgage," on which a total of $56,427.04 was paid, according to the Claim Records. That is the total of the amounts paid to Wachovia and Wells Fargo, as listed in the Disbursement History, $52,107.04 plus $4,320.

A closer analysis of the Disbursement History reveals that the $4,320 paid to Wachovia was indeed comprised of ongoing mortgage payments, at $720 each for six months' worth of payments. The $4,320 did not represent payments toward the arrears claim. According to the Disbursement History, $720 was the amount of the ongoing monthly payment made to Wells Fargo after the payments to Wachovia stopped.[4] The Disbursement History does not support the debtors' conclusion, in their complaint, that pre-petition arrears totaling $4,672.52 were paid through the plan. In fact,

there is a strong indication to the contrary. The Claim Records list as Claim No. 25 the claim of Wells Fargo Home Mortgage for "mtg. arrears" in the claimed amount of $4,672.52. The total amount paid through the plan on that claim is listed as "0.00."

The order confirming the debtors' plan, also filed by the debtors as an exhibit to their complaint, further supports the conclusion that no payments were made through the plan toward the pre-petition arrears. As regards Wachovia and Wells Fargo Bank, the order states:

> Creditor Wells Fargo Bank, N.A. should be provided for in place of Wachovia in Class 1. The Monthly Contract Installment Amount to Wells Fargo Bank under Class 1 is $1068.08, which includes $754.86 in principal and interest; $212.44 in taxes and $100.78 in Hazard insurance. Debtors shall pay the monthly arrearage payments directly to Wells Fargo in the amount of $400.00 commencing on the sixty first month following December 2011 and continuing thereafter until paid in full and payments will be made on the first of each month.

Amended Order filed Oct. 17, 2013, DN 131, 2:8-19 (emphasis added). The plan was a 60-month plan with the first plan payment due in December of 2011. As payments on the Bank's arrearage claim were to begin in the 61st month following December 2011, they were to begin only after the plan had been completed.

As indicated above, the debtors' complaint makes essentially one factual allegation with any detail – that the confirmed plan provided the Bank was to receive ongoing payments totaling $52,107.04 and $4,672.52 "to cure the arrears over the life of the plan." Compl., ¶ 10. That allegation is contradicted by the order confirming the plan and the trustee's payment history, both filed by the debtors as exhibits to the complaint. The remaining allegations in the complaint are mere conclusory allegations that the Bank has failed to properly credit payments made under the plan.

> [T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully- harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.
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> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

Iqbal, 556 U.S. at 678 (citations omitted, internal quotation marks omitted).

In short, the complaint offers nothing more than the conclusions that the confirmed plan provided for the debtors to cure the arrears over the life of the

plan and that the Bank failed to properly credit the debtors' payments made through the plan. The first of these is inconsistent with the facts as set forth in the exhibits to the complaint, and the second is simply an unadorned conclusion. Thus, the court concludes the debtors have failed to state a claim to relief that is plausible on its face and the motion will be conditionally granted. The debtors will have 20 days from the date of the order on this motion to file an amended complaint. If the debtors file a timely amended complaint, the Bank may file a response within the time permitted by applicable rules. If the debtors fail to file a timely amended complaint, their complaint will be dismissed without further notice or hearing.

The court will hear the matter.

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1 According to the complaint and the Bank's proof of claim filed in the underlying case, the $4,672.52 figure was the amount of the pre-petition arrears due the Bank, not the amount of the dividend to be paid on the arrears.

2 In ruling on a Rule 12(b)(6) motion, a court may consider material that is submitted as part of the complaint. Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001).

3 The parties do not dispute that Wells Fargo Home Mortgage took the note and deed of trust as a successor to Wachovia.

4 The debtors' confirmed plan, although modified by the order confirming it, provided for monthly payments to Wachovia of $720 for the ongoing payment and $100 per month toward the arrears. The order confirming the plan changed the ongoing payment to $1,068.08. The arrears were addressed as described below.

18. 16-21582-D-7 JOSSUE MEJIA
CLH-1

MOTION TO VACATE DISCHARGE OF DEBTOR AND/OR MOTION TO DISMISS CASE
10-13-17 [21]

Tentative ruling:

This is the debtor's motion to vacate the chapter 7 discharge she received in this case on July 15, 2016, three months after she filed the case, and to dismiss the case, both on the ground her original attorney in the case gave her incorrect advice about the dischargeability of her federal tax debt, with the result that her debt has not been discharged, although she had been told it would be. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The debtor relies on In re McDaniel, 350 B.R. 616, 619 (Bankr. M.D. Fla. 2006), for the proposition that a debtor who got incorrect advice about the dischargeability of priority tax debts may vacate her discharge so she may wait until the time has passed to render the debts dischargeable and then file a new bankruptcy case to discharge them. This court agrees instead with In re Markovich, 207 B.R. 909 (9th Cir. BAP 1997), and the cases cited therein. In Markovich, the

panel held that a debtor does not have standing to seek to revoke his discharge pursuant to § 727(d) of the Bankruptcy Code (207 B.R. at 911), and that "the court does not have the equitable power to revoke a discharge outside the framework of § 727(d)." Id. at 913; see also In re Aubry, 2015 Bankr. LEXIS 3305, *7-8 (Bankr. C.D. Cal. 2015); In re Newton, 490 B.R. 126, 128 (Bankr. D.D.C. 2013) ["A discharge carries consequences of finality for the debtor-creditor relationship . . . . The debtor's present and future creditors are entitled to certainty regarding whether those consequences are in place . . . ."].

In the present case, the debtor scheduled general unsecured debts totaling $18,756 in addition to the $45,000 due the IRS that the debtor believed she was discharging. The debtor has had the benefit of the discharge as against the holders of those debts for almost 16 months. Even if the debtor had standing to request revocation of the discharge and the court had the authority to grant it, the court would find insufficient reason to permit the debtor to upset the consequences of the discharge she sought and was granted. Accordingly, the motion will be denied.

The court will hear the matter.

19. 17-20984-D-7 SCB-8 — DAVID/JENNIFER VON SAVOYE — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DAVID DAUDIFFRED VON SAVOYE AND JENNIFER ELLEN VON SAVOYE 10-3-17 [107]

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. 14-30086-D-7 HLG-1 — ERIC/ANGELA AUCLAIR — MOTION TO AVOID LIEN OF DEUTSCHE BANK NATIONAL TRUST COMPANY 10-5-17 [42]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by Deutsche Bank National Trust Company (the "Bank"). The amount of the judicial lien is $23,629. The court intends to grant the motion in part because the motion indicates the Bank's lien impairs the debtors' exemption only to a limited extent, and the balance of the lien does not impair the exemption.

The debtors testify the value of the property was $380,000 when this case was

filed. According to the formula in § 522(f), as correctly applied in paragraph 12 of the debtors' motion, the Bank's judicial lien impairs the debtors' exemption only in part. Said another way, deducting the amount due on the deed of trust, $358,133, and the amount of the debtors' exemption, $14,651, from the value of the property, $380,000, there remains $7,216 in equity in the property to secure the Bank's lien without impairing the debtors' exemption. Thus, the court will grant the motion in part and avoid the Bank's lien to the extent of $16,413 ($23,629 - $7,216).

However, by way of another motion on this calendar, the debtors seek to avoid a judicial lien held by GCFS, Inc., which is senior to the Bank's judicial lien. Because that motion, applying the § 522(f) formula, indicates the GCFS lien does not impair the debtors' exemption, that lien in not avoidable. If the debtors' motion to avoid the lien of GCFS is denied, the amount of GCFS's unavoidable lien, $5,499, will be added to the amount of the unavoidable mortgage lien, thereby reducing the value remaining to secure the Bank's judicial lien to $1,717. In that case the court will grant this motion in part and avoid the Bank's lien to the extent of $21,912, leaving $1,717 as not avoided.

The court will hear the matter.

21. 14-30086-D-7 ERIC/ANGELA AUCLAIR — MOTION TO AVOID LIEN OF GCFS, INC.
HLG-2 — 10-5-17 [47]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by GCFS, Inc. against the debtors' residence. The amount of the judicial lien is $5,499. The court intends to deny the motion because the debtors have failed to demonstrate they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D).

The debtors testify the value of the property was $380,000 when this case was filed. According to the formula in § 522(f), as correctly applied in paragraph 12 of the debtors' motion, the Bank's judicial lien does not impair the debtors' exemption. Said another way, deducting the amount due on the deed of trust, $358,133, and the amount of the debtors' exemption, $14,651, from the value of the property, $380,000, there remains $7,216 in value in the property, more than sufficient to secure the full amount of the Bank's lien, $5,499. Accordingly, the motion will be denied.

The court will hear the matter.

22. 15-29890-D-7 GRAIL SEMICONDUCTOR
16-2088 DNL-13
CARELLO V. STERN ET AL

MOTION TO ENFORCE JUDGMENT
10-11-17 [408]

23. 17-25401-D-7 BRIAN SOUSA
VVF-1
HONDA LEASE TRUST VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
10-17-17 [12]

24. 17-26314-D-7 CHRISTIAN BOOTH
VVF-1
AMERICAN HONDA FINANCE CORPORATION VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-17-17 [12]

25. 17-24417-D-12 JERRY WATKINS
JPJ-1

MOTION TO DISMISS CASE
10-18-17 [19]

Tentative ruling:

The court will use this hearing as a status conference and to set a briefing schedule.

26. 17-24417-D-12 JERRY WATKINS
CA-3

MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC
10-25-17 [24]

27. 14-25148-D-11 HENRY TOSTA
GMW-4

MOTION TO INCUR DEBT
10-25-17 [735]

28. 17-23355-D-7 LAURA/KYLE KELLY

MOTION FOR AN EXTENSION OF TIME TO PAY THE UNPAID FILING FEE AND ADMINISTRATIVE FEE
10-17-17 [31]

29. 14-27267-D-7 SARAD/USHA CHAND
HSM-27

MOTION FOR ADMINISTRATIVE EXPENSES
10-18-17 [427]

30. 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]

31. 11-46172-D-12 VIRENDA/SUMAN MISHRA
17-2156 PGM-2
MISHRA ET AL V. WELLS FARGO BANK, N.A.

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]

32. 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]

Tentative ruling:

This is the motion of defendant The Hongkong and Shanghai Banking Corporation Limited (the "Bank") to dismiss the complaint of the plaintiff, Sheri Carello, who is the trustee in the chapter 7 case in which this adversary proceeding is pending (the "trustee"), for lack of personal jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(2), made applicable in this proceeding by Fed. R. Bankr. P. 7012(b). The matter was originally briefed and the court heard oral argument over a year ago, and the hearing has been continued periodically since then pursuant to stipulations of the parties. The parties have now filed supplemental arguments and evidence based on discovery undertaken in the interim. For the following reasons, the court intends to grant the motion.

The court will begin by adopting as though fully set forth herein its ruling included in the civil minutes for October 5, 2016, DN 125. In that ruling, the court indicated it intended to grant the motion in part but to continue the hearing to permit the trustee to take discovery limited to matters that might support the court's exercise of general personal jurisdiction over the Bank. Having conducted discovery, the trustee has now concluded she probably cannot support a finding that

the court has general jurisdiction over the Bank. However, she contends her discovery revealed additional evidence supporting the conclusion that the court has specific jurisdiction over the Bank.

As a preliminary matter, the Bank objects to the court's consideration of that evidence on the basis that the October 5, 2016 ruling was a final ruling, that the court concluded it does not have specific jurisdiction over the Bank for purposes of the trustee's claims, and that the court opened the door to discovery relating to general jurisdiction only, not specific jurisdiction. The Bank also argues the trustee has missed the deadlines for seeking reconsideration of the ruling. The court disagrees. True, the October 5, 2016 ruling was labeled a "final ruling." However, the court's practice is to change the label of what was a tentative ruling in the pre-hearing dispositions to a final ruling in the minutes issued following the hearing. That does not have the effect of turning the ruling into an order of any kind, and indeed, the ruling is found in the court's "civil minutes," not in a "minute order" or other order that could have been appealed. In short, the ruling was not a final disposition of the motion.

Further, it is within the court's discretion to permit discovery limited to jurisdictional issues and such discovery is to be permitted "where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008) (citations omitted). In this instance, the pertinent facts were controverted, and although the court determined the trustee had not made a case for specific jurisdiction as of October of 2016, it is not surprising that subsequent discovery revealed further facts on the issue that may benefit the court in its analysis. Thus, the court will consider the trustee's new evidence.

When the trustee originally opposed the motion and the court issued its October 5, 2016 ruling, the trustee was relying for her specific jurisdiction argument solely on the fact that the Bank had refused to turn over on the trustee's demand the funds remaining in the BHI account. The trustee now relies on (1) about 75 pages of documents apparently produced by the Bank concerning transfers out of the BHI and Digerati accounts, and (2) emails and affidavits sent by Brad Woods to the Bank. As to the first category, the trustee offers this testimony:

> Documentation in the Trustee's possession shows that [the Bank's] correspondent account was used in the routing of the Funds from the BHI and Digerati account[s] through the United States on their way to ultimate destinations, in most cases, in the Philippines. This occurred not once, not twice, but *twelve* times. In all, $2,597,500 is shown to have been routed from the BHI and Digerati accounts through the correspondent account; all in U.S. dollars, at the direction of a U.S.-based customer.

Renfro Decl., DN 412, ¶¶ 13-15.[1] The court will assume without deciding, and for purposes of this motion only, that 12 transfers were routed through the Bank's correspondent bank, HSBC Bank USA, N.A. in the United States. Another transfer was apparently routed through the Bank of the Philippine Islands rather than HSBC Bank USA, N.A. It appears all 13 transfers were made at the direction of Donald Stern.[2]

The trustee has also submitted copies of two emails from Brad Woods, a former officer of the debtor, to the Bank, dated March 30 and March 31, 2016, respectively, apparently sent in response to a questionnaire the Bank had emailed to him on March 30, 2016 regarding the various transfers that had been made out of the BHI account.

In his first email, Mr. Woods stated that the transactions out of the account after the initial deposit by the Niro law firm, in October of 2015, "are all based on the fraudulent conveyance which was the deposit into the account on October 14, 201[5]. All conveyances since would be fraudulent also." Trustee's Ex. E. Mr. Woods asked that the Bank "please hold all remaining funds" and confirm that it had done so. Id. With the second email, Mr. Woods transmitted affidavits of himself and Ronald Hofer, advised the Bank they were "finalizing whom should be in contact with you" (that is, who would be Woods' and Hofer's representative for communications with the Bank), requested contact information for a representative of the Bank, and asked whether a court order or other documentation might be required to ensure that the funds were held. Trustee's Ex. F.

Mr. Woods' and Mr. Hofer's affidavits identified them as the Chief Financial Officer and Chief Executive Officer, respectively, of Grail Semiconductor, Inc., the debtor in the underlying bankruptcy case. They stated that Grail filed a chapter 11 bankruptcy petition on December 30, 2015 and that the case is pending in this district as Case No. 15-29890. Both affidavits cautioned:

> Any accounts and funds held by Grail are now part of the bankruptcy estate and subject to the bankruptcy court's jurisdiction. Pursuant to Bankruptcy Code Section 547 (Title 11 of the United States Code), any transfer of Grail's funds made to creditors and insiders after the filing of bankruptcy, as well as within the 90 days prior to filing bankruptcy, are subject to set-aside and return by the Debtor (Grail).
>
> Please be advised that the transfers that occurred between October 14, 2015, and February 26, 2016, were made without appropriate corporate approval or court order, and are subject to return under the United States Bankruptcy Code. Any future transfers must be approved by court order and anyone aiding in the improper transfer of such funds may be subject to liability.

Trustee's Ex. F.[3]

The trustee contends this new evidence – the bank records of the transfers routed through the Bank's correspondent bank in New York and the Woods emails and affidavits – supports this conclusion:

> [J]urisdiction is based on [the Bank's] failure to freeze the BHI and Digerati accounts after receiving notice from Woods as to the character and status of the Funds, its facilitation of transfers from those accounts after the notice, and its election to route the Funds through its correspondent account in so doing – none of which actions were the result of any unilateral actions by others or mere inaction on its own part.

Trustee's Opp., filed October 11, 2017 (DN 411), at 8:27-9:4.

The court accepts for the sake of argument only and for purposes of this motion only the trustee's allegations that the Bank routed 12 of 13 transfers through its correspondent bank in New York and that five of those transfers occurred after the Bank had received Woods' emails and affidavits (assuming, for the sake of argument, the Bank actually received them). Taking those allegations at face value, the court is not persuaded the trustee has shown the court has specific jurisdiction over the Bank for the purpose of her claims. In its original ruling, the court addressed the

trustee's claim that the Bank's failure or refusal to turn over the funds on the trustee's demand gave rise to specific jurisdiction. The court said, "[I]f merely refusing to consent to the plaintiff's demands in or prior to the filing of a lawsuit were sufficient, every demand or complaint made or filed by a plaintiff would automatically confer jurisdiction." Oct. 5, 2016 ruling.

That the Bank did not comply with Woods' request to freeze the BHI account (or the funds transferred to the Digerati account, which Woods evidently did not know about at the time), even coupled with his assertion that the original deposit into the BHI account was a fraudulent conveyance and even with affidavits of two alleged officers of a corporation allegedly in bankruptcy in the United States, claiming the funds are property of the corporation's bankruptcy estate and any transfers are subject to being set aside, does not change the court's conclusion. It is hard to imagine a weaker connection with a judicial forum than a bank's failure to honor the assertions of a third party in that forum that are contrary to the directions of the bank's account holder, especially where those assertions are based solely on the third party's legal opinions and he or she has not first gone through any judicial process to obtain a court order. If that connection were sufficient to give rise to specific personal jurisdiction over a foreign bank, banks worldwide would have to undertake factual and legal investigations of the allegations of every such third party before allowing an account holder to do what it chooses with the funds in its own account.

Nor does the fact that 12 of the 13 transfers were routed through the Bank's correspondent bank in New York change the analysis. The trustee has not suggested any Bank employee made a deliberate decision to route the transfers through that bank rather than through a correspondent bank in another country. It may be that the internal computer mechanisms employed by the Bank used the New York bank automatically. Mr. Stern may have been in the United States when he initiated the 12 transfers and in the Philippines when he initiated the one that went through the Bank of the Philippine Islands, and the Bank's use of its New York correspondent bank for the 12 and the bank in the Philippines for the other may have been tied to those circumstances. In other words, the trustee has not shown that the Bank's use of the New York bank represented any sort of deliberate decision that should subject the Bank to jurisdiction of the United States courts in these factual circumstances. It is simply not sufficient to confer specific jurisdiction that a bank decline to structure its use of its correspondent banks for wire transfers requested by a customer based on a notice from a third party challenging the customer's right to the funds in its account where the third party has not gone through the process of obtaining judicial intervention.

The trustee's reliance on Licci v. Lebanese Canadian Bank, 732 F.3d 161 (2nd Cir. 2013), is misplaced. In that case, the Second Circuit relied virtually solely on the alleged use by the Lebanese Canadian Bank ("LCB") of its correspondent bank, American Express Bank in New York, to conclude that the plaintiffs had made a prima facie showing that the federal district court for the Southern District of New York had specific personal jurisdiction over LCB. The plaintiffs had alleged that "LCB used this correspondent account to wire millions of dollars on behalf of Hizballah, knowing that such wire transfers would enable Hizballah 'to plan, to prepare for and to carry out terrorist attacks'" in Israel (732 F.3d at 165-66), including those in which the plaintiffs or their family members were injured or killed.

In assessing jurisdiction under New York state law, the court highlighted the plaintiffs' allegations of "the frequency and deliberate nature" of LCB's use of its New York correspondent bank to effectuate its support of terrorist activities in

Israel. Licci, 732 F.3d at 168 (citation omitted). The court "confirmed that this conduct 'indicates desirability and a lack of coincidence'; that is, it reflects [LCB's] purposeful availment of the privilege of doing business in the New York forum." Id. The court also held that LCB's use of the correspondent account was sufficiently related to the plaintiffs' claims to support specific jurisdiction because those claims were "grounded in the allegation that LCB violated various statutory duties by using its correspondent account to funnel money to Shahid and Hizballah." Id. at 169. The court observed that LCB could have used correspondent banks anywhere in the world but deliberately chose its correspondent bank in New York to make transfers that "numbered in the dozens and totaled several million dollars." Licci, 732 F.3d at 171. Thus, LCB purposefully availed itself of "New York's dependable and transparent banking system, the dollar as a stable and fungible currency, and the predictable jurisdictional and commercial law of New York and the United States." Id.

There is no suggestion in the present case that, in routing 12 of the 13 transfers initiated by Stern through a correspondent bank in New York, the Bank considered the nature of New York's banking system, the dollar as contrasted with other currencies, or the nature of New York or United States law. A Senior Legal Counsel for the Bank has testified the Bank does most of its business in Asia Pacific; thus, it is likely it has correspondent banks in other countries, and again, there is no evidence the "decision" to route the transfers through the New York bank represented an intention to take advantage of those factors.

The court concludes the trustee has not made a prima facie showing as to either the "minimum contacts" prong of the Ninth Circuit test for specific jurisdiction, as set forth in the court's October 5, 2016 ruling (purposeful availment or purposeful direction), or that the trustee's claim arises out of or relates to the Bank's forum-related activities, which were simply failure to comply with requests from individuals in the United States to freeze accounts belonging to others and using a correspondent bank in the United States to route 12 of 13 transfers requested by its customer. The failure to act, or an act of omission, does not constitute the type of purposeful availment or purposeful direction needed to find specific jurisdiction. Therefore, the court need not reach the third issue – whether the exercise of jurisdiction would comport with fair play and substantial justice.

For the reasons stated, the court intends to grant the motion. The court will hear the matter.

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1 All of the trustee's new exhibits are submitted under the declaration of Kristen Renfro, an attorney in the trustee's counsel's law firm, who purports to authenticate them as "documentation in the Trustee's possession." The Bank has filed evidentiary objections to virtually all of Ms. Renfro's testimony and to the exhibits. The court finds it unnecessary to rule on the objections. Instead, the court will consider the exhibits for the sole purpose of ruling on this motion and neither party may rely on this opinion as a determination of admissibility of any of the exhibits (or of Ms. Renfro's declaration) at any other time or for any other purpose.

2 Although the parties have not made a clear evidentiary record in this regard, the court assumes the account was set up such that Stern was authorized to transfer the funds unilaterally.

3 The trustee has also submitted a copy of the Bank's questionnaire that

triggered Woods' emails, with answers apparently typed in by him, including his statement that the purpose of the transfer was to "[h]ide the money as this money was transferred by Don Stern as a result of fraud." Trustee's Ex. D. Mr. Woods added that "[l]awyers are working on the return of this money." Id.