UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 18, 2015 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. 15-20600-D-11 MHK-8 — SAEED ZARAKANI — MOTION TO USE CASH COLLATERAL 10-20-15 [165]

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 Debtor's Motion for Authority to Continue to Use Cash Collateral to Make Adequate Protection Payments is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

2. 15-24800-D-7 MOH-1 — DENNIS CURRIER — MOTION TO AVOID LIEN OF BUTTE COUNTY CREDIT BUREAU A CORP 10-16-15 [19]

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.

3. 15-25906-D-7 ESTHER BAEZ — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
BHS-2 — 10-12-15 [18]

Tentative ruling:

This is the trustee's objection to the debtor's claim of a $65,000 exemption in a "motor vehicle accident claim," under Cal. Code Civ. Proc. § 704.140. The debtor has filed opposition. For the following reasons, the objection will be sustained.

This department agrees with two other departments of this court that have recently held that for exemptions claimed under California exemption law, as was the debtor's claim of exemption in this case, the burden of proof is on the debtor. See In re Tallerico, 532 B.R. 774, 788 (Bankr. E.D. Cal. June 30, 2015); In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. June 8, 2015); see also In re Barnes, 275 B.R. 889, 899, n.2 (Bankr. E.D. Cal. 2002); cf. Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (9th Cir. BAP 2010); In re Gomez, 530 B.R. 751, 754 (Bankr. E.D. Cal. May 5, 2015); In re Dunnaway, 466 B.R. 515, 520 (Bankr. E.D. Cal. 2012). Further, although § 522(l) creates what has been referred to as "a form of presumption in favor of claimed exemptions" (Tallerico, 532 B.R. at 782), that presumption is rebutted by nothing more than the mere filing of an objection to exemption. Id. Section 522(l) is also viewed as creating a burden of production, which, however, is satisfied by the mere filing of an objection to exemption, which, in turn, shifts the burden of production to the debtor. Id. at 790.

The debtor commenced this case on July 27, 2015. The trustee submitted a copy of the transcript of the § 341 meeting, authenticated by the trustee's declaration, at which the debtor testified that from the settlement of the motor vehicle claim, the debtor received $15,000 and directed that the balance, $49,590.97, be paid to her granddaughter. The debtor testified that in order to continue to qualify for Medi-Cal, the debtor had to spend or give away the balance of the settlement proceeds. The debtor testified twice that she "gave" the money to her granddaughter.

The trustee has submitted copies of documents he testifies were submitted to him by the debtor at the § 341 meeting, including (1) a Release dated October 23, 2014 by which, in exchange for a payment of $100,000, the debtor released Pedro C. Savala from all claims arising from the accident; (2) a Disbursement Sheet concerning Baez v. Savala, showing a gross settlement of $100,000, deductions for attorney's fees and medical expenses, with net proceeds of $59,590.97 "plus $5,000 medpay in trust" (a total of $64,590.97) to the debtor; (3) checks on a law firm's account for $10,000 and $5,000 payable to the debtor; and (4) a check on the law firm's account for $49,590.97 payable to the debtor and her granddaughter. All of these documents predate by at least seven months the filing of the debtor's bankruptcy case; thus, the debtor apparently intended to claim as exempt the proceeds of the motor vehicle claim as opposed to the claim itself.

The trustee does not object to a $15,000 portion of the exemption claim; he does object to the debtor's attempt to exempt the balance, $49,590.97, which the debtor gave to her granddaughter before this bankruptcy case was filed. The trustee's counsel testifies he spoke with the debtor's granddaughter, who confirmed she received the $49,590.97, that it was deposited to an account solely in her name, and that the debtor wanted her to have the funds to use for educational purposes, a car, and possibly a down payment on a home. She also stated she is using the funds to pay for her own living expenses.[1]

"[A]n individual debtor may exempt from property of the estate" certain property. § 522(b)(1) of the Bankruptcy Code (emphasis added). Thus, in Heintz v. Carey (In re Heintz), 198 B.R. 581 (9th Cir. BAP 1996), the BAP "emphasize[d] the well settled rule that property cannot be exempted unless it is first property of the estate." 198 B.R. at 586, citing Owen v. Owen, 500 U.S. 305, 308 (1991) ["No property can be exempted . . . unless it first falls within the bankruptcy estate. Section 522(b) provides that the debtor may exempt certain property 'from property of the estate'; obviously, then, an interest that is not possessed by the estate cannot be exempted."]; see also Rains v. Flinn (In re Rains), 428 F.3d 893, 906 (9th Cir. 2005); Elliott v. Weil (In re Elliott), 523 B.R. 188, 197, n.5 (9th Cir. BAP 2014). In short, because the $49,590.97 the debtor gave her granddaughter prior to the filing of this case did not become property of the estate, the debtor may not exempt it "from the estate."

In light of this authority, the debtor's opposition is unpersuasive. First, the debtor contends the applicable exemption statute, Cal. Code Civ. Proc. § 704.140, requires only that the funds sought to be exempted resulted from the debtor's settlement of a personal injury claim. "Trustee cites no authority for denying an exemption if the protected property is then converted, conveyed or otherwise relinquished from the debtor's control. There is none, at least not according to CCP 704.140." Debtor's Opposition, filed Nov. 4, 2015 ("Opp."), at 2:6-8. True, the limitation is not found in that code section; it is found in § 522(b)(1) of the Bankruptcy Code, quoted above.

Next, the debtor makes two strained arguments in an attempt to get around the "necessary for the support of the judgment debtor" language in Cal. Code Civ. Proc. § 704.140. First, citing the general proposition that exemptions are to be construed broadly in favor of the debtor, she argues that, although the settlement proceeds are exempt to the extent necessary for the debtor's support, "[n]owhere does it say it actually has to be used for her support." Opp. at 2:19. Second, "[e]ven if the trustee was right that the money had to be used for the support of the debtor to be exempt, perhaps it was--to preserve her Medi-Cal coverage." Id. at 2:22-23. The arguments find no support in law or logic.

Finally, the debtor cites Cal. Code Civ. Proc. § 703.080(a), which provides that "[s]ubject to any limitation provided in the particular exemption, a fund that is exempt remains exempt to the extent that it can be traced into deposit accounts or in the form of cash or its equivalent." She argues the settlement proceeds were "deposited directly to debtor and her granddaughter through the disbursement of her case." Opp. at 2:28-3:1. Presumably, the argument is that, because the funds in the debtor's granddaughter's account can be traced to the settlement (assuming they can), they remain exempt. The debtor cites no authority, and the court is aware of none, for the proposition that the tracing statute prevails over Bankruptcy Code § 522(b)(1) when property has been transferred from the debtor to someone else prior to the filing of the petition.

The debtor cites In re Gardiner, 332 B.R. 891 (Bankr. S.D. Cal. 2005), in which the court held that the proceeds of a worker's compensation award did not lose their exempt status when invested in another form of property. 332 B.R. at 894. "[T]he California legislature has specifically manifested its intent that exempt funds remain exempt even though they are converted from one form of asset (for example, a check) to another form of asset (for example, cash or its equivalent in a deposit account), to the extent the funds can be traced." Id. There was no suggestion in the case that the new form of asset into which the claim proceeds were converted was

not property of the debtor at the time of the bankruptcy filing or that it did not become property of the estate at that time. Thus, the case is not applicable here.

The trustee's objection alone was sufficient to rebut the presumption that the debtor's claim of exemption is valid, and therefore, sufficient to shift the burden of production to the debtor, who has the burden of proof. Further, the trustee has submitted evidence from which the court concludes that the property the debtor claims as exempt under Cal. Code Civ. Proc. § 704.140 is, in any amount in excess of $15,000, not properly claimed as exempt because it is not property of the estate. The debtor has not rebutted this evidence. Accordingly, the objection will be sustained. The court will hear the matter.

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1 The trustee has commenced an adversary proceeding seeking to recover the funds from the debtor's granddaughter.

4. 13-21707-D-7 JAMES/DIANE STRAUSS — MOTION TO AVOID LIEN OF WELLS FARGO
KY-4 — 10-16-15 [71]

Final ruling:

On October 14, 2015, the debtors filed, as DC No. KY-4, a motion to avoid a judicial lien of Wells Fargo Bank, along with a notice of hearing and supporting declaration. Two days later, on October 16, 2015, the debtors filed, this time as a single document (DN 71), exact duplicates of the motion, notice of hearing, and declaration. Because those documents are duplicative of the documents at DNs 60, 61, and 62 (Item 5 on this calendar), this matter will be removed from calendar.

5. 13-21707-D-7 JAMES/DIANE STRAUSS — MOTION TO AVOID LIEN OF WELLS FARGO
KY-4 — 10-14-15 [60]

Final ruling:

This is the debtors' motion to avoid a judicial lien of Wells Fargo Bank. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

6. 13-21707-D-7 JAMES/DIANE STRAUSS — MOTION TO AVOID LIEN OF BARRETT BUSINESS SERVICES, INC.
KY-5 — 10-14-15 [63]

Final ruling:

This is the debtors' motion to avoid a judicial lien of Barrett Business Services, Inc. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

7. 13-21707-D-7 KY-5 — JAMES/DIANE STRAUSS — MOTION TO AVOID LIEN OF BARRETT BUSINESS SERVICES 10-16-15 [70]

Final ruling:

On October 14, 2015, the debtors filed, as DC No. KY-5, a motion to avoid a judicial lien of Barrett Business Services, Inc., along with a notice of hearing and supporting declaration. Two days later, on October 16, 2015, the debtors filed, this time as a single document (DN 70), exact duplicates of the motion, notice of hearing, and declaration. Because those documents are duplicative of the documents at DNs 63, 64, and 65 (Item 6 on this calendar), this matter will be removed from calendar.

8. 13-21707-D-7 KY-6 — JAMES/DIANE STRAUSS — MOTION TO AVOID LIEN OF BARBARA J. HENNINGSEN 10-16-15 [69]

Final ruling:

On October 14, 2015, the debtors filed, as DC No. KY-6, a motion to avoid a judicial lien of Barbara J. Henningsen, along with a notice of hearing and supporting declaration. Two days later, on October 16, 2015, the debtors filed, this time as a single document (DN 69), exact duplicates of the motion, notice of hearing, and declaration. Because those documents are duplicative of the documents at DNs 66, 67, and 68 (Item 9 on this calendar), this matter will be removed from calendar.

9. 13-21707-D-7 KY-6 — JAMES/DIANE STRAUSS — MOTION TO AVOID LIEN OF BARBARA J. HENNINGSEN 10-14-15 [66]

Final ruling:

This is the debtors' motion to avoid a judicial lien of Barbara J. Henningsen. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

10. 15-27909-D-7 WRF-1 — JORGE/SYLVIA CARACOSA — MOTION TO AVOID LIEN OF CAPTIAL ONE BANK (USA), N.A. 10-22-15 [9]

11.	12-40315-D-7 DNL-15	OLUSEGUN/YVONNE LERAMO	CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES 9-23-15 [337]

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 for allowance of post-petition administrative tax claim is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

12.	14-25820-D-11	INTERNATIONAL MANUFACTURING GROUP, INC.	STATUS CONFERENCE RE: VOLUNTARY PETITION 5-30-14 [1]

13.	15-25121-D-7 HCS-4	PETER AMENDOLA AND VANESSA PERALTA	MOTION TO ABANDON 10-21-15 [55]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to abandon various pieces of real property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned. Moving party is to submit an appropriate order. No appearance is necessary.

14.	15-26922-D-7 VVF-1 AMERICAN HONDA FINANCE CORPORATION VS.	CHRISTOPHER/MANDY ALLGOOD	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 10-23-15 [11]

15. 15-25526-D-7 AR BUSINESS GROUP, INC. MOTION FOR RELIEF FROM
DMB-1 AUTOMATIC STAY
MARSHAUN TATE VS. 10-8-15 [26]

16. 15-25526-D-7 AR BUSINESS GROUP, INC. MOTION FOR RELIEF FROM
DMB-2 AUTOMATIC STAY
ELISEO QUINTERO VS. 10-8-15 [31]

17. 15-27729-D-7 DWAYNE SPIVEY MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. 10-20-15 [10]
VS.

Final ruling:

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

18. 15-22038-D-7 PHILLIP/L'TANYA DOMINIQUE MOTION FOR COMPENSATION FOR
JRR-1 WEST AUCTIONS, INC.,
AUCTIONEER(S)
10-8-15 [31]

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 for compensation for West Auctions, Inc. is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

19. 15-22038-D-7 PHILLIP/L'TANYA DOMINIQUE — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-1 — 10-7-15 [25]
NATIONSTAR MORTGAGE, LLC VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on June 29, 2015 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.

20. 10-50339-D-7 ELEFTHERIOS/PATRICIA EFSTRATIS — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MARSHALL KATZMAN
HSM-6 — 10-16-15 [313]

Tentative ruling:

This is the trustee's motion for approval of a compromise of claims asserted against Marshall Katzman in a pending state court action. As is appropriate under applicable bankruptcy law,[1] the motion is also pitched up as a motion to sell the claims to Mr. Katzman, subject to overbidding. Guy Kornblum, dba Guy Kornblum & Associates ("Kornblum") has filed a response. For the following reasons, the motion will be granted and the compromise and sale will be approved. Inasmuch as the compromise also represents a sale of estate assets, the sale will be subject to overbidding, if any, at the hearing.

Kornblum asserts a judgment lien in the claims asserted in the state court action, and thus, in the proceeds of any sale or compromise of those claims. He states he does not oppose the proposed settlement but wishes to address what he believes are certain assumptions alleged in the motion; first and foremost, the assumption that the assets of Genesis Specialty Tile & Accessories, LLC ("GTSA"), which is a plaintiff in the state court action, are property of the bankruptcy estate in this case.

As a general rule, a trustee may, after notice and a hearing, sell property of the estate. Sec. 363(b)(1) of the Bankruptcy Code. Thus, to the extent the claims proposed to be sold are not property of the estate, it is arguable the trustee may not sell them. However, GTSA is a party to the compromise that is the subject of this motion and the moving papers were served on GTSA through its counsel. GTSA has not filed opposition to the motion and it is reasonable to conclude, given that fact and given the signature of its managing member on the settlement agreement, that GTSA consents to the sale of its interest, if any, in the claims. Accordingly, it is reasonable to construe the sale, to the extent necessary, as a sale free and clear of the interest, if any, of GTSA in the claims proposed to be sold, pursuant to § 363(f)(2).

Returning to Kornblum's alleged lien, the trustee has made clear in the motion that he does not seek by this motion to avoid or impair Kornblum's lien rights. The trustee further states he will hold the proceeds of the settlement and sale pending a determination of those lien rights. Thus, in granting this motion, the court is making no determination of the rights of Kornblum to the settlement proceeds.

Similarly, however, the court is making no determination as to the factual allegations made by Kornblum in his opposition – that, for example, he has a valid lien in the state court claims and the settlement proceeds, that a purported assignment between GTSA and the bankruptcy estate is subject to Kornblum's judgment lien, that GTSA is entitled to 96% of any settlement, and that the assets of GTSA are not assets of the bankruptcy estate. For this reason, the court has not considered the exhibits submitted by Kornblum under cover of a request for judicial notice; namely, a copy of a Notice of Lien filed in the state court action, a copy of a judgment in favor of Kornblum and against GTSA and debtor Eleftherios Efstratis in a different state court action, a document entitled General Assignment, and a declaration of an attorney filed in the state court action. None of these documents is necessary to the court's ruling on this motion and the court therefore makes no findings as to their admissibility or any other matter.

The court will hear the matter.

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1 See In re Lahijani, 325 B.R. 282, 284 (9th Cir. BAP 2005); Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R. 415, 421 (9th Cir. BAP 2003).

21.	10-50339-D-7 HSM-7	ELEFTHERIOS/PATRICIA EFSTRATIS	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DAVID ZUCCOLOTTO 10-16-15 [317]

Tentative ruling:

This is the trustee's motion for approval of a compromise of claims asserted against David Zuccolotto in a pending state court action. As is appropriate under applicable bankruptcy law,1 the motion is also pitched up as a motion to sell the claims to Mr. Zuccolotto, subject to overbidding. Guy Kornblum, dba Guy Kornblum & Associates ("Kornblum") has filed a response. For the following reasons, the motion will be granted and the compromise and sale will be approved. Inasmuch as the compromise also represents a sale of estate assets, the sale will be subject to overbidding, if any, at the hearing.

Kornblum asserts a judgment lien in the claims asserted in the state court action, and thus, in the proceeds of any sale or compromise of those claims. He states he does not oppose the proposed settlement but wishes to address what he believes are certain assumptions alleged in the motion; first and foremost, the assumption that the assets of Genesis Specialty Tile & Accessories, LLC ("GTSA"), which is a plaintiff in the state court action, are property of the bankruptcy estate in this case.

As a general rule, a trustee may, after notice and a hearing, sell property of the estate. Sec. 363(b)(1) of the Bankruptcy Code. Thus, to the extent the claims proposed to be sold are not property of the estate, it is arguable the trustee may

not sell them. However, GTSA is a party to the compromise that is the subject of this motion and the moving papers were served on GTSA through its counsel. GTSA has not filed opposition to the motion and it is reasonable to conclude, given that fact and given the signature of its managing member on the settlement agreement, that GTSA consents to the sale of its interest, if any, in the claims. Accordingly, it is reasonable to construe the sale, to the extent necessary, as a sale free and clear of the interest, if any, of GTSA in the claims proposed to be sold, pursuant to § 363(f)(2).

Returning to Kornblum's alleged lien, the trustee has made clear in the motion that he does not seek by this motion to avoid or impair Kornblum's lien rights. The trustee further states he will hold the proceeds of the settlement and sale pending a determination of those lien rights. Thus, in granting this motion, the court is making no determination of the rights of Kornblum to the settlement proceeds.

Similarly, however, the court is making no determination as to the factual allegations made by Kornblum in his opposition – that, for example, he has a valid lien in the state court claims and the settlement proceeds, that a purported assignment between GTSA and the bankruptcy estate is subject to Kornblum's judgment lien, that GTSA is entitled to 96% of any settlement, and that the assets of GTSA are not assets of the bankruptcy estate. For this reason, the court has not considered the exhibits submitted by Kornblum under cover of a request for judicial notice; namely, a copy of a Notice of Lien filed in the state court action, a copy of a judgment in favor of Kornblum and against GTSA and debtor Eleftherios Efstratis in a different state court action, a document entitled General Assignment, and a declaration of an attorney filed in the state court action. None of these documents is necessary to the court's ruling on this motion and the court therefore makes no findings as to their admissibility or any other matter.

The court will hear the matter.

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1 See In re Lahijani, 325 B.R. 282, 284 (9th Cir. BAP 2005); Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R. 415, 421 (9th Cir. BAP 2003).

22.	14-25148-D-11 MF-33	HENRY TOSTA	MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD FERNANDEZ, LLP FOR MATTHEW J. OLSON, DEBTOR'S ATTORNEY(S) 10-21-15 [535]

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.

23.	10-42050-D-7 12-2367 BURKART V. PRASAD	VINCENT/MALANIE SINGH HLC-1	CONTINUED MOTION FOR SUMMARY JUDGMENT 8-22-15 [123]

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

Tentative ruling:

This is the motion of the plaintiff in this adversary proceeding, who is the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment in favor of the trustee and against the defendant, Jain Prasad (the "defendant"), in the amount of $95,500. The defendant, through counsel, has filed opposition and the trustee has filed a reply. For the following reasons, the motion will be granted in part.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison, 134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 56 . "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant was required by an earlier court order to file a motion to withdraw the reference by a certain date or be deemed to have consented to this court's jurisdiction to enter findings of fact, conclusions of law, and final judgment in all causes of action in this adversary proceeding. The defendant did not file a motion to withdraw the reference. Accordingly, the court finds that the defendant waived the right to an Article III adjudication, and the court has authority to enter a final judgment in this adversary proceeding.

In considering a motion for summary judgment, the court looks beyond the pleadings and considers the materials in the record, including depositions, documents, declarations, discovery responses, and so on. Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). The moving party bears the burden of producing evidence showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Once the moving party has met its initial burden, the non-moving party must present affirmative evidence showing the existence of genuine issues of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

By this motion, the trustee asks the court to determine that the payments made by the debtor in the underlying chapter 7 case, Vincent Singh (the "debtor" or "Singh"), to the defendant between August 19, 2008 and August 19, 2010, a total of $95,500, are avoided as actual fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code and Cal. Civ. Code § 3439.04(a)(1). Thus, he seeks a judgment against the defendant in the amount of $95,500. In the alternative, to the extent the defendant asserts an affirmative defense in response to the motion, the trustee seeks a determination that the debtor was running a Ponzi scheme and made payments to the defendant totaling $95,500 in furtherance of the Ponzi scheme. The trustee also asks the court to disallow the defendant's claim filed in the underlying case, Claim No. 6, pursuant to § 502(d), unless the defendant pays the estate the amount

of the avoided transfers. The defendant has asserted an affirmative defense which, if properly supported, would preclude entry of a monetary judgment in the trustee's favor or a judgment disallowing the claim at this time. See discussion below. This would leave the trustee's request for the alternative relief – a determination that the debtor was running a Ponzi scheme and made payments to the defendant totaling $95,500 in furtherance of the Ponzi scheme.

In support of the motion, the trustee has submitted (1) a declaration of his attorney, Christopher Hughes; (2) a declaration of his expert witness, Gerard A. McHale, Jr.; and (3) exhibits consisting of (a) Mr. McHale's expert report; (b) a summary list of the payments the trustee contends were made by the debtor to the defendant; and (c) a copy of a set of Requests for Admissions which the trustee's counsel testifies were served on the defendant and which he also testifies the defendant has not responded to. The court will begin with the evidence of a Ponzi scheme.

Mr. McHale testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "[a]ll payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. In addition, the court has been made aware earlier in this litigation that the debtor, Vincent Singh, has pled guilty in federal court to wire fraud in connection with his operation of the Ponzi scheme. The court takes judicial notice of the debtor's guilty plea and plea agreement [1] as conclusive evidence that the debtor was operating a Ponzi scheme and conclusive evidence of the debtor's fraudulent intent under Bankruptcy Code § 548(a)(1)(A) and California Civil Code § 3439.04(a)(1).[2] In addition, the defendant admits in the opposition that Singh was running a Ponzi scheme during the period in which the payments to the defendant were made.

The defendant also does not dispute the trustee's allegation that those payments were made by Singh to the defendant in furtherance of the Ponzi scheme. Thus, the court will grant summary adjudication in favor of the trustee and against the defendant to the extent of determining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendant in the total amount of $95,500 were made in furtherance of the Ponzi scheme.

The court turns, then, to the question of the defendant's affirmative defense. The opposition states that the defendant can produce evidence at trial to support a "good faith and for value" defense and that the issues concerning this defense should be reserved for trial. The trustee replies that the defendant has presented no evidence to show the existence of facts to support a viable defense, as it was incumbent on the defendant to do, and thus, summary judgment should be granted in the trustee's favor regardless of any affirmative defense the defendant might assert at trial. The rule and the case law support the trustee's position.[3]

On the other hand, however, the court is aware of the parties' stipulation, filed October 8, 2015, to reopen discovery and continue the pretrial conference in this adversary proceeding. The new discovery bar date is January 8, 2016; the pretrial conference is set for January 27, 2016. If the court were to accept the trustee's reply to the defendant's opposition to this motion and grant summary judgment in the trustee's favor in the full amount requested, regardless of the defendant's stated intention to present evidence at trial concerning his good faith

and fair value defense, there would be little purpose to the parties' stipulation to reopen discovery and continue the pretrial conference. Thus, the court will reserve the defendant's good faith and fair value defense for trial.

The court will grant the motion in part and grant summary adjudication in favor of the trustee and against the defendant to the extent of determining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendant in the total amount of $95,500 were made in furtherance of the Ponzi scheme. There being no dispute as to the amount the defendant received from Singh, $95,500, there are no other issues for the court to determine on this motion. The matter of the payments the defendant made to Singh and the issue of whether the defendant received in good faith the payments the trustee seeks to recover will be deferred until the time of trial.

The court will hear the matter.

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1 See Ex. A to Plea Agreement in United States v. Singh, Case No. 2:12-CR-352 (E.D. Cal.), filed March 20, 2014.

2 See Santa Barbara Capital Mgmt. v. Neilson (In re Slatkin), 525 F.3d 805, 812 (9th Cir. 2008), see also Donell v. Kowell, 533 F.3d 762, 700 (9th Cir. 2008); AFI Holding, Inc. v. Mackenzie, 525 F.3d 700, 704 (9th Cir. 2008); La Bella v. Bains, 2012 U.S. Dist. LEXIS 76502, *10-12, 2012 WL 1976972, *4 (S.D. Cal. 2012).

3 See Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 249 (1986); see also Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th Cir. 2008) (citation omitted).

24.	10-42050-D-7 12-2369 BURKART V. SINGH	VINCENT/MALANIE SINGH HLC-1	CONTINUED MOTION FOR SUMMARY JUDGMENT 8-22-15 [126]

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

Tentative ruling:

This is the motion of the plaintiff in this adversary proceeding, who is the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment in favor of the trustee and against the defendant, Prem Singh (the "defendant"), in the amount of $104,700. The defendant, through counsel, has filed opposition and the trustee has filed a reply. For the following reasons, the motion will be granted in part.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison, 134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held

that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant was required by an earlier court order to file a motion to withdraw the reference by a certain date or be deemed to have consented to this court's jurisdiction to enter findings of fact, conclusions of law, and final judgment in all causes of action in this adversary proceeding. The defendant did not file a motion to withdraw the reference. Accordingly, the court finds that the defendant waived the right to an Article III adjudication, and the court has authority to enter a final judgment in this adversary proceeding.

In considering a motion for summary judgment, the court looks beyond the pleadings and considers the materials in the record, including depositions, documents, declarations, discovery responses, and so on. Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). The moving party bears the burden of producing evidence showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Once the moving party has met its initial burden, the non-moving party must present affirmative evidence showing the existence of genuine issues of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

By this motion, the trustee asks the court to determine that the payments made by the debtor in the underlying chapter 7 case, Vincent Singh (the "debtor" or "Singh"), to the defendant between August 19, 2008 and August 19, 2010, a total of $104,700, are avoided as actual fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code and Cal. Civ. Code § 3439.04(a)(1). Thus, he seeks a judgment against the defendant in the amount of $104,700. In the alternative, to the extent the defendant asserts an affirmative defense in response to the motion, the trustee seeks a determination that the debtor was running a Ponzi scheme and made payments to the defendant totaling $104,700 in furtherance of the Ponzi scheme. The trustee also asks the court to disallow the defendant's claim filed in the underlying case, Claim No. 16, pursuant to § 502(d), unless the defendant pays the estate the amount of the avoided transfers. The defendant has asserted an affirmative defense which, if properly supported, would preclude entry of a monetary judgment in the trustee's favor or a judgment disallowing the claim at this time. See discussion below. This would leave the trustee's request for the alternative relief – a determination that the debtor was running a Ponzi scheme and made payments to the defendant totaling $104,700 in furtherance of the Ponzi scheme.

In support of the motion, the trustee has submitted (1) a declaration of his attorney, Christopher Hughes; (2) a declaration of his expert witness, Gerard A. McHale, Jr.; and (3) exhibits consisting of (a) Mr. McHale's expert report; (b) a summary list of the payments the trustee contends were made by the debtor to the defendant; and (c) a copy of a set of Requests for Admissions which the trustee's counsel testifies were served on the defendant and which he also testifies the defendant has not responded to. The court will begin with the evidence of a Ponzi scheme.

Mr. McHale testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "[a]ll payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. In addition, the court has been made aware earlier in this litigation that the debtor, Vincent Singh, has

pled guilty in federal court to wire fraud in connection with his operation of the Ponzi scheme. The court takes judicial notice of the debtor's guilty plea and plea agreement [1] as conclusive evidence that the debtor was operating a Ponzi scheme and conclusive evidence of the debtor's fraudulent intent under Bankruptcy Code § 548(a)(1)(A) and California Civil Code § 3439.04(a)(1).[2] In addition, the defendant admits in the opposition that Singh was running a Ponzi scheme during the period in which the payments to the defendant were made.

The defendant also does not dispute the trustee's allegation that those payments were made by Singh to the defendant in furtherance of the Ponzi scheme. Thus, the court will grant summary adjudication in favor of the trustee and against the defendant to the extent ofdetermining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendant in the total amount of $104,700 were made in furtherance of the Ponzi scheme.

The court turns, then, to the question of the defendant's affirmative defense. The opposition states that the defendant can produce evidence at trial to support a "good faith and for value" defense and that the issues concerning this defense should be reserved for trial. The trustee replies that the defendant has presented no evidence to show the existence of facts to support a viable defense, as it was incumbent on the defendant to do, and thus, summary judgment should be granted in the trustee's favor regardless of any affirmative defense the defendant might assert at trial. The rule and the case law support the trustee's position.[3]

On the other hand, however, the court is aware of the parties' stipulation, filed October 8, 2015, to reopen discovery and continue the pretrial conference in this adversary proceeding. The new discovery bar date is January 8, 2016; the pretrial conference is set for January 27, 2016. If the court were to accept the trustee's reply to the defendant's opposition to this motion and grant summary judgment in the trustee's favor in the full amount requested, regardless of the defendant's stated intention to present evidence at trial concerning his good faith and fair value defense, there would be little purpose to the parties' stipulation to reopen discovery and continue the pretrial conference. Thus, the court will reserve the defendant's good faith and fair value defense for trial.

The court will grant the motion in part and grant summary adjudication in favor of the trustee and against the defendant to the extent of determining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendant in the total amount of $104,700 were made in furtherance of the Ponzi scheme. There being no dispute as to the amount the defendant received from Singh, $104,700, there are no other issues for the court to determine on this motion. The matter of the payments the defendant made to Singh and the issue of whether the defendant received in good faith the payments the trustee seeks to recover will be deferred until the time of trial.

The court will hear the matter.

1 See Ex. A to Plea Agreement in United States v. Singh, Case No. 2:12-CR-352 (E.D. Cal.), filed March 20, 2014.

2 See Santa Barbara Capital Mgmt. v. Neilson (In re Slatkin), 525 F.3d 805, 812 (9th Cir. 2008), see also Donell v. Kowell, 533 F.3d 762, 700 (9th Cir. 2008); AFI Holding, Inc. v. Mackenzie, 525 F.3d 700, 704 (9th Cir. 2008); La Bella v. Bains, 2012 U.S. Dist. LEXIS 76502, *10-12, 2012 WL 1976972, *4 (S.D. Cal. 2012).

3 See Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 249 (1986); see also Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th Cir. 2008) (citation omitted).

25.	10-42050-D-7 12-2395 BURKART V. PRASAD ET AL	VINCENT/MALANIE SINGH HLC-1	CONTINUED MOTION FOR SUMMARY JUDGMENT 8-24-15 [125]

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

Tentative ruling:

This is the motion of the plaintiff in this adversary proceeding, who is the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment in favor of the trustee and against the defendants, Parvin Prasad and Savita Deo (the "defendants"), in the amount of $164,110. The defendants, through counsel, have filed opposition and the trustee has filed a reply.1 For the following reasons, the motion will be granted in part.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison, 134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendants were required by an earlier court order to file a motion to withdraw the reference by a certain date or be deemed to have consented to this court's jurisdiction to enter findings of fact, conclusions of law, and final judgment in all causes of action in this adversary proceeding. The defendants did not file a motion to withdraw the reference. Accordingly, the court finds that the defendants waived the right to an Article III adjudication, and the court has authority to enter a final judgment in this adversary proceeding.

In considering a motion for summary judgment, the court looks beyond the pleadings and considers the materials in the record, including depositions, documents, declarations, discovery responses, and so on. Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). The moving party bears the burden of producing evidence showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Once the moving party has met its initial burden, the non-moving party must present affirmative evidence showing the existence of genuine issues of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

By this motion, the trustee asks the court to determine that the payments made by the debtor in the underlying chapter 7 case, Vincent Singh (the "debtor" or "Singh"), to the defendants between August 19, 2008 and August 19, 2010, a total of $164,110, are avoided as actual fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code and Cal. Civ. Code § 3439.04(a)(1). Thus, he seeks a judgment against the defendants in the amount of $164,110. In the alternative, to the extent the defendants assert an affirmative defense in response to the motion, the trustee seeks a determination that the debtor was running a Ponzi scheme and made payments to the defendants totaling $164,110 in furtherance of the Ponzi scheme. The trustee also asks the court to disallow the defendants' claim filed in the underlying case, Claim No. 116, pursuant to § 502(d), unless the defendants pay the estate the amount of the avoided transfers. The defendants have asserted an affirmative defense which, if properly supported, would preclude entry of a monetary judgment in the trustee's favor or a judgment disallowing the claim at this time. See discussion below. This would leave the trustee's request for the alternative relief – a determination that the debtor was running a Ponzi scheme and made payments to the defendants totaling $164,110 in furtherance of the Ponzi scheme.

In support of the motion, the trustee has submitted (1) a declaration of his attorney, Christopher Hughes; (2) a declaration of his expert witness, Gerard A. McHale, Jr.; and (3) exhibits consisting of (a) Mr. McHale's expert report; (b) a summary list of the payments the trustee contends were made by the debtor to the defendants; and (c) copies of two sets of Requests for Admissions, one for each defendant, which the trustee's counsel testifies were served on the defendants and which he also testifies the defendants have not responded to. The court will begin with the evidence of a Ponzi scheme.

Mr. McHale testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "[a]ll payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. In addition, the court has been made aware earlier in this litigation that the debtor, Vincent Singh, has pled guilty in federal court to wire fraud in connection with his operation of the Ponzi scheme. The court takes judicial notice of the debtor's guilty plea and plea agreement [2] as conclusive evidence that the debtor was operating a Ponzi scheme and conclusive evidence of the debtor's fraudulent intent under Bankruptcy Code § 548(a)(1)(A) and California Civil Code § 3439.04(a)(1).[3] In addition, the defendants admit in the opposition that Singh was running a Ponzi scheme during the period in which the payments to the defendants were made.

The defendants also do not dispute the trustee's allegation that those payments were made by Singh to the defendants in furtherance of the Ponzi scheme. Thus, the court will grant summary adjudication in favor of the trustee and against the defendants to the extent of determining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendants in the total amount of $164,110 were made in furtherance of the Ponzi scheme.

The court turns, then, to the question of the defendants' affirmative defense. The opposition states that the defendants can produce evidence at trial to support a "good faith and for value" defense and that the issues concerning this defense should be reserved for trial. The trustee replies that the defendants have presented no evidence to show the existence of facts to support a viable defense, as

it was incumbent on them to do, and thus, summary judgment should be granted in the trustee's favor regardless of any affirmative defense the defendants might assert at trial. The rule and the case law support the trustee's position.[4]

On the other hand, however, the court is aware of the parties' stipulation, filed October 8, 2015, to reopen discovery and continue the pretrial conference in this adversary proceeding. The new discovery bar date is January 8, 2016; the pretrial conference is set for January 27, 2016. If the court were to accept the trustee's reply to the defendants' opposition to this motion and grant summary judgment in the trustee's favor in the full amount requested, regardless of the defendants' stated intention to present evidence at trial concerning their good faith and fair value defense, there would be little purpose to the parties' stipulation to reopen discovery and continue the pretrial conference. Thus, the court will reserve the defendants' good faith and fair value defense for trial.

The court will grant the motion in part and grant summary adjudication in favor of the trustee and against the defendants to the extent of determining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendants in the total amount of $164,110 were made in furtherance of the Ponzi scheme. There being no dispute as to the amount the defendants received from Singh, $164,110, there are no other issues for the court to determine on this motion. The matter of the payments the defendants made to Singh and the issue of whether the defendants received in good faith the payments the trustee seeks to recover will be deferred until the time of trial.

The court will hear the matter.

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1 By its terms, the opposition is filed on behalf of defendant Parvin Prasad only, and not defendant Savita Deo. The court assumes this was an oversight on counsel's part, and will treat the opposition as having been filed on behalf of both defendants. If this is incorrect, counsel should bring the matter to the court's attention at the hearing.

2 See Ex. A to Plea Agreement in United States v. Singh, Case No. 2:12-CR-352 (E.D. Cal.), filed March 20, 2014.

3 See Santa Barbara Capital Mgmt. v. Neilson (In re Slatkin), 525 F.3d 805, 812 (9th Cir. 2008), see also Donell v. Kowell, 533 F.3d 762, 700 (9th Cir. 2008); AFI Holding, Inc. v. Mackenzie, 525 F.3d 700, 704 (9th Cir. 2008); La Bella v. Bains, 2012 U.S. Dist. LEXIS 76502, *10-12, 2012 WL 1976972, *4 (S.D. Cal. 2012).

4 See Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 249 (1986); see also Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th Cir. 2008) (citation omitted).

26.	10-42050-D-7 12-2433 BURKART V. SINGH	VINCENT/MALANIE SINGH HLC-1	CONTINUED MOTION FOR SUMMARY JUDGMENT 8-22-15 [120]

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

Tentative ruling:

This is the motion of the plaintiff in this adversary proceeding, who is the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment in favor of the trustee and against the defendant, Jagdishwar Singh (the "defendant"), in the amount of $217,330. The defendant, through counsel, has filed opposition and the trustee has filed a reply. For the following reasons, the motion will be granted in part.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison, 134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgment on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant was required by an earlier court order to file a motion to withdraw the reference by a certain date or be deemed to have consented to this court's jurisdiction to enter findings of fact, conclusions of law, and final judgment in all causes of action in this adversary proceeding. The defendant did not file a motion to withdraw the reference. Accordingly, the court finds that the defendant waived the right to an Article III adjudication, and the court has authority to enter a final judgment in this adversary proceeding.

In considering a motion for summary judgment, the court looks beyond the pleadings and considers the materials in the record, including depositions, documents, declarations, discovery responses, and so on. Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). The moving party bears the burden of producing evidence showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Once the moving party has met its initial burden, the non-moving party must present affirmative evidence showing the existence of genuine issues of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

By this motion, the trustee asks the court to determine that the payments made by the debtor in the underlying chapter 7 case, Vincent Singh (the "debtor" or "Singh"), to the defendant between August 19, 2008 and August 19, 2010, a total of $217,330, are avoided as actual fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code and Cal. Civ. Code § 3439.04(a)(1). Thus, he seeks a judgment against the defendant in the amount of $217,330. In the alternative, to the extent the defendant asserts an affirmative defense in response to the motion, the trustee seeks a determination that the debtor was running a Ponzi scheme and made payments to the defendant totaling $217,330 in furtherance of the Ponzi scheme. The trustee also asks the court to disallow the defendant's claim filed in the underlying case, Claim No. 13, pursuant to § 502(d), unless the defendant pays the estate the amount

of the avoided transfers. The defendant has asserted an affirmative defense which, if properly supported, would preclude entry of a monetary judgment in the trustee's favor or a judgment disallowing the claim at this time. See discussion below. This would leave the trustee's request for the alternative relief – a determination that the debtor was running a Ponzi scheme and made payments to the defendant totaling $217,330 in furtherance of the Ponzi scheme.

In support of the motion, the trustee has submitted (1) a declaration of his attorney, Christopher Hughes; (2) a declaration of his expert witness, Gerard A. McHale, Jr.; and (3) exhibits consisting of (a) Mr. McHale's expert report; (b) a summary list of the payments the trustee contends were made by the debtor to the defendant; and (c) a copy of a set of Requests for Admissions which the trustee's counsel testifies were served on the defendant and which he also testifies the defendant has not responded to. The court will begin with the evidence of a Ponzi scheme.

Mr. McHale testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "[a]ll payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. In addition, the court has been made aware earlier in this litigation that the debtor, Vincent Singh, has pled guilty in federal court to wire fraud in connection with his operation of the Ponzi scheme. The court takes judicial notice of the debtor's guilty plea and plea agreement [1] as conclusive evidence that the debtor was operating a Ponzi scheme and conclusive evidence of the debtor's fraudulent intent under Bankruptcy Code § 548(a)(1)(A) and California Civil Code § 3439.04(a)(1).[3] In addition, the defendant admits in the opposition that Singh was running a Ponzi scheme during the period in which the payments to the defendant were made.

The defendant also does not dispute the trustee's allegation that those payments were made by Singh to the defendant in furtherance of the Ponzi scheme. Thus, the court will grant summary adjudication in favor of the trustee and against the defendant to the extent of determining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendant in the total amount of $217,330 were made in furtherance of the Ponzi scheme.

The court turns, then, to the question of the defendant's affirmative defense. The opposition states that the defendant can produce evidence at trial to support a "good faith and for value" defense and that the issues concerning this defense should be reserved for trial. The trustee replies that the defendant has presented no evidence to show the existence of facts to support a viable defense, as it was incumbent on the defendant to do, and thus, summary judgment should be granted in the trustee's favor regardless of any affirmative defense the defendant might assert at trial. The rule and the case law support the trustee's position.[3]

On the other hand, however, the court is aware of the parties' stipulation, filed October 8, 2015, to reopen discovery and continue the pretrial conference in this adversary proceeding. The new discovery bar date is January 8, 2016; the pretrial conference is set for January 27, 2016. If the court were to accept the trustee's reply to the defendant's opposition to this motion and grant summary judgment in the trustee's favor in the full amount requested, regardless of the defendant's stated intention to present evidence at trial concerning his good faith

and fair value defense, there would be little purpose to the parties' stipulation to reopen discovery and continue the pretrial conference. Thus, the court will reserve the defendant's good faith and fair value defense for trial.

The court will grant the motion in part and grant summary adjudication in favor of the trustee and against the defendant to the extent of determining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendant in the total amount of $217,330 were made in furtherance of the Ponzi scheme. There being no dispute as to the amount the defendant received from Singh, $217,330, there are no other issues for the court to determine on this motion. The matter of the payments the defendant made to Singh and the issue of whether the defendant received in good faith the payments the trustee seeks to recover will be deferred until the time of trial.

The court will hear the matter.

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1 See Ex. A to Plea Agreement in United States v. Singh, Case No. 2:12-CR-352 (E.D. Cal.), filed March 20, 2014.

2 See Santa Barbara Capital Mgmt. v. Neilson (In re Slatkin), 525 F.3d 805, 812 (9th Cir. 2008), see also Donell v. Kowell, 533 F.3d 762, 700 (9th Cir. 2008); AFI Holding, Inc. v. Mackenzie, 525 F.3d 700, 704 (9th Cir. 2008); La Bella v. Bains, 2012 U.S. Dist. LEXIS 76502, *10-12, 2012 WL 1976972, *4 (S.D. Cal. 2012).

3 See Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 249 (1986); see also Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th Cir. 2008) (citation omitted).

27.	14-29651-D-7 GJH-2	DISTRIBUTION PROPERTIES, LLC	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THOMAS SLAGLE 10-21-15 [16]

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.

28. 14-32452-D-7 JOHN RODRIGO
UST-3

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)
9-24-15 [119]

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 for denial of discharge of debtor under 11 U.S.C. Section 727(a) is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

29. 15-26452-D-7 VIRDIE BLOCK
ASW-1
WELLS FARGO BANK, N.A. VS.

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
10-5-15 [14]

Final ruling:

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

30. 15-25162-D-7 CYNTHIA DEMERY
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-13-15 [14]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on October 13, 2015 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor 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.

31. 14-20064-D-7 GLENN GREGO — AMENDED OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 12
WR-68 — 9-28-15 [498]

Tentative ruling:

This is the debtor's objection to the claim of the Internal Revenue Service (the "Service"). The Service has filed opposition and the debtor has filed a reply. For the following reasons, the objection will be sustained in part and overruled in part.

As a preliminary matter, where the debt underlying a claim will not or may not be discharged, the debtor has standing to object to the claim. Wellman v. Ziino (In re Wellman), 2007 Bankr. LEXIS 4291, *5 n.5 (9th Cir. BAP 2007); Vandevort v. Creditor's Adjustment Bureau, Inc. (In re Vandevort), 2007 Bankr. LEXIS 4919, *12 n.9 (9th Cir. BAP 2007). In this case, the debtor will not receive a discharge. See order denying discharge, filed April 17, 2014. Thus, the debtor has standing to object to claims.

The debtor objects to the claim on two grounds; first, that the Service's proof of claim was not timely filed. The claims bar date in this case was February 23, 2015 whereas the Service did not file its proof of claim until September 2, 2015. Thus, the claim was not timely filed. However, as the Service points out, § 726(a) of the Bankruptcy Code contains certain provisions applicable only in chapter 7 cases that override the general rule that late-filed claims will be disallowed. Thus, the court "shall allow [a] claim . . . except to the extent [among others not applicable here] that proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure." § 502(b)(9).

Section 726(a) lists the order in which property of the estate in a chapter 7 case will be distributed. Under that subsection, certain claimants are entitled to receive a distribution despite the fact that their proofs of claim were not timely filed. First, the trustee has not mailed out a summary of his final report and has not commenced a final distribution. Thus, the Service is entitled to a distribution on the unsecured priority portion of its claim, $54,833.21, under § 726(a)(1). Second, depending on whether or not the Service had notice or actual knowledge of the case in time to timely file a proof of claim, the Service is entitled to a distribution on the general unsecured portion of its claim, $11,136, under either § 726(a)(2) or (3). Thus, as to those two components of the claim, the objection, to the extent it is based on the late filing of the proof of claim, will be overruled.

On the other hand, the Service has not offered authority for the proposition that the secured portion of its claim, $7,313.81, survives § 502(b)(9), and the court is aware of none. Therefore, as to that portion of the claim, the objection will be sustained. This ruling determines only the extent to which the Service may participate in a distribution from the estate on account of its proof of claim, not the extent, if any, to which the lien securing that portion of the claim will survive the bankruptcy case. Further, this ruling does not determine the extent, if any, to which the debt underlying the claim, or any portion of it, is valid as a personal liability of the debtor.

Second, the debtor objects to the claim on a substantive ground. Thus, the court will consider the evidence in light of the applicable burdens of production

and the burden of proof. "A proof of claim executed and filed in accordance with [the Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim." Fed. R. Bankr. P. 3001(f). "Upon objection, [a] proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). "To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proof[] of claim [itself].'" Id. (citation omitted, emphasis added).

The debtor contends that as a result of his filing of amended returns for 2009, 2010, and 2011 and his filing of returns for 2012 and 2013, his obligation to the IRS is zero. He testifies: "My tax obligation was reduced to zero as a result of these amended returns and the filed returns due primarily to loss carryover from previous years. [¶] At this moment, I owe nothing to the Internal Revenue Service for income taxes for years 2009, 2010, 2011, 2012 and 2013." Grego Decl., filed Sept. 16, 2015 as an attachment to the amended objection to claim, at 3:10-13. The Service contends in response that this testimony represents nothing more than the debtor's conclusory lay opinion that he owes nothing to the Service.

In reply, the debtor makes three arguments. First, the debtor submitted with his reply a declaration of his attorney, who purports to authenticate a copy of a fax transmittal cover sheet from the Service stating the debtor owes nothing for tax years 2005, 2006, and 2008. The fax transmittal cover sheet is not attached and not filed separately. Second, the debtor contends his own declaration represents not just an opinion "but rather a declaration of what the 2009 Tax Return shows and the tax return is now acknowledged as having been received." Debtor's Reply at 2:7-9. This testimony is plainly self-serving. Further, the amount showed as owing on a taxpayer's tax return is not conclusive as to the amount owed, and in this case, given the debtor's conduct in this case, commencing with inaccurate schedules filed at the very beginning of the case, is insufficient evidence to overcome the prima facie validity of the Service's claim. The court declines the debtor's offer to bring a copy of the tax return to the hearing for the court's confidential review. Absent concurrence by the Service that nothing is owed, the tax return, regardless of what it shows, is insufficient.

Finally, the debtor claims the Service filed a claim alleging taxes due for the years 2005, 2006, 2008, and 2009 "even though amended tax returns were filed with them at the time they did it." Reply at 2:17-18. Thus, in the debtor's opinion, "[t]he Service has, therefore, no credibility and is incapable of administering its own records." Id. at 2:18-19. This argument assumes the Service should simply accept a taxpayer's tax returns without examination or must complete its examination within the taxpayer's preferred time frame. The argument carries no weight. As explained above, the court finds that the debtor's self-serving testimony, unsupported as it is by any expert testimony on the subject of the his tax liability, is insufficient to overcome the prima facie validity of the claim or to shift the burden of production to the Service to provide further evidence in support of its claim.

For the reasons stated, the objection will be sustained in part and the secured portion of the claim will be disallowed as not timely filed. As to the priority and general unsecured portions of the claim, the objection will be overruled. The court will hear the matter.

32. 15-25966-D-7 GJS-1 — STACEY SALLABERRY — MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA 10-14-15 [13]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by First National Bank of Omaha (the "Bank"). The motion will be denied because the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank by certified mail to the attention of "An Officer, A Managing or General Agent, or Any Other Agent Authorized to Receive Service of Process," whereas the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of "An Officer, A Managing or General Agent, or Any Other Agent Authorized to Receive Service of Process" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

The moving party also served the Bank through the attorneys who obtained its abstract of judgment, whereas there is no evidence the attorneys are authorized to accept service of process on the Bank's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

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

33. 14-27267-D-7 HSM-6 — SARAD/USHA CHAND — MOTION FOR COMPENSATION FOR HEFNER, STARK & MAROIS, LLP, TRUSTEE'S ATTORNEY(S) 10-20-15 [166]

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.

34. 12-29374-D-7 AP-1 — KEITH GRIFFIN AND KELLY WEAVER-GRIFFIN
BANK OF AMERICA, N.A. VS.
— CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-15 [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 and the trustee has filed a report of no assets. The debtors received their discharge on October 29, 2015 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. And as a result of the trustee's report of no assets, 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.

35. 15-26574-D-7 — CLAIRE BENOIT
— ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-21-15 [41]

36. 15-27284-D-11 RMY-2 — CONSOLIDATED RELIANCE, INC.
— MOTION TO BORROW AND/OR MOTION TO GRANT ADMINISTRATIVE PRIORITY TO LENDER
10-20-15 [47]

Tentative ruling:

This is the debtor's motion to borrow money and to grant administrative priority to lenders. The motion was ostensibly noticed under LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns. First, the moving party failed to serve several of the creditors who had, by the time the motion was served, filed proofs of claim in this case at the addressees on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g) (and two were not served at all), and failed to serve two creditors who have not filed claims at their addresses as listed in the debtor's schedules (Capital Premium Financing and Credit Counseling Services), as required by the same rule. It is arguable notice to all creditors was not required (see Fed. R. Bankr. P. 4001(c)(1)(C)); however, having obviously undertaken to serve all creditors, the moving party should have made certain the list was complete.

In any event, the manner in which the service list was prepared – with the parties listed in no particular order – has made it difficult for the court to determine whether service was complete and accurate. Counsel may wish to consider using the court's PACER matrix for service in the future. It may be printed

directly onto address labels and presents an up-to-date list, including names and addresses as listed on proofs of claim, in alphabetical order, which makes the court's review much easier. (Counsel will want to note that, as an amended master address list was not filed to include the addresses of the EDD and State Board of Equalization on the Roster of Governmental Agencies, their correct addresses do not appear on the PACER matrix.)

Second, the notice of hearing begins by stating that parties wishing to present their views are not required to file written opposition. It goes on, however, to give filing and service requirements for any written opposition a party may choose to serve, and to admonish potential respondents that any opposition must specify whether the party consents to the resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c), and if not, how to go about objecting. These requirements are applicable only to motions noticed under LBR 9014-1(f)(1); there are no such requirements for opposing an (f)(2) motion. Finally, the notice admonishes respondents they must take all steps referenced above or the court may remove the matter from calendar and resolve it without oral argument. That caution is inappropriate for a motion noticed under (f)(2).

The court will hear the matter.

37.	12-26188-D-7 FF-3	FELIX/SVETLANA VEYTSMAN	MOTION TO AVOID LIEN OF JPMORGAN CHASE BANK, N.A. 10-20-15 [48]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by JPMorgan Chase Bank, N.A. (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an "officer, managing or general agent, or agent for service of process," whereas the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer and <u>only</u> an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of an officer, managing or general agent, or agent for service of process were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

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

38. 12-26188-D-7 FF-4 — FELIX/SVETLANA VEYTSMAN — MOTION TO AVOID LIEN OF TRI COUNTIES BANK 10-20-15 [53]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Tri Counties Bank ("Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an "officer, managing or general agent, or agent for service of process," whereas the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of an officer, managing or general agent, or agent for service of process were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

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

39. 12-26188-D-7 FF-5 — FELIX/SVETLANA VEYTSMAN — MOTION TO AVOID LIEN OF CAPITAL ONE BANK USA, N.A. 10-20-15 [58]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Capital One Bank (USA), N.A. (the "Bank"). The motion will be denied because the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank by certified mail to the attention of an "officer, managing or general agent, or agent for service of process," whereas the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of an officer, managing or general agent, or agent for service of process were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

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

40. 15-27512-D-7 DANIEL/NICOLE LEDFORD
SCF-1
VALLEY FIRST CREDIT UNION
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-3-15 [13]

41. 14-31725-D-11 TAHOE STATION, INC.
FWP-10

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FELDERSTEIN FITZGERALD WILLOUGHBY AND PASCUZZI, LLP FOR PAUL J. PASCUZZI, TRUSTEE'S ATTORNEY(S)
10-26-15 [269]

DEBTOR DISMISSED: 10/29/2015

42. 14-31725-D-11 TAHOE STATION, INC.
FWP-11

MOTION FOR COMPENSATION FOR W. DONALD GIESEKE, CHAPTER 11 TRUSTEE
10-26-15 [260]

DEBTOR DISMISSED: 10/29/2015

43. 14-31725-D-11 TAHOE STATION, INC.
FWP-12

MOTION FOR COMPENSATION FOR JUNE COX, ACCOUNTANT(S)
10-26-15 [264]

DEBTOR DISMISSED: 10/29/2015

44. 14-31725-D-11 FWP-13 — TAHOE STATION, INC. — MOTION FOR COMPENSATION FOR CONVENIENCE MANAGEMENT SERVICES, INC., OTHER PROFESSIONAL(S) 10-28-15 [274]

DEBTOR DISMISSED: 10/29/2015

45. 11-46032-D-11 JGD-14 — CROSS CHECK SERVICES, LLC — CONTINUED MOTION FOR ENTRY OF DISCHARGE 10-14-15 [234]

CLOSED: 07/15/2014

Final ruling:

This is the debtor's motion for entry of a discharge. The court's tentative ruling issued in advance of the initial hearing on the motion noted the following service defects: (1) the moving party failed to serve several creditors who filed claims in this case at the addresses on their proofs of claim and failed to serve two of them at all; (2) the moving party failed to serve the party requesting special notice at DN 106 at its designated address; and (3) the moving party served the Franchise Tax Board at an incomplete address (counsel should refer to the Board's proof of claim). The court continued the hearing to give the moving party the opportunity to file a notice of continued hearing and serve it, together with the motion and supporting declaration, on the creditors not previously served or not previously served correctly, as described above.

On November 10, 2015, the debtor filed a notice of continued hearing and a proof of service purporting to evidence service on November 4, 2015 of the notice of continued hearing, motion, and declaration on (1) the party requesting special notice at DN 106; and (2) the Franchise Tax Board at its complete address. The moving party did not serve the creditors who filed Claim Nos. 1, 2, or 6 at the addresses on their proofs of claim. The creditor filing Claim No. 6 has not been served at all – either originally or with the notice of continued hearing.

As a result of these service defects, which has not been cured despite the court's original tentative ruling, the motion will be denied by minute order. No appearance is necessary.

46. 15-24848-D-7 SAOVANNI MEAS
CJO-2
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-3-15 [67]

Tentative ruling:

This is Federal National Mortgage Association's (the "Movant") motion for relief from the automatic stay. The Movant asserts that it conducted a pre-petition foreclosure on the real property commonly referred to as 1476 Gentry Lane, Tracy, California (the "Property"), and as a result of the pre-petition sale, the debtor only maintains a possessory interest in the Property. Based on the foregoing, the Movant asserts that cause exists for relief from stay pursuant to Bankruptcy Code (the "Code) §§ 362(d)(1) and (2). The debtor has filed an opposition, asserting (1) that Movant does not have standing to bring the motion; and (2) that she has an affirmative claim against Movant.

Because of the debtor's prior history of bankruptcy filings, the court does not need to address the Movant's, nor the debtor's contentions. The debtor filed a prior Chapter 13 case on September 7, 2014, as case no. 14-29285. This case was dismissed for the failure to file documents on October 6, 2014. The debtor then filed this case on June 6, 2015, which is within one year of dismissal of case no. 14-29285. As a result, pursuant to Code § 362(c)(3), the automatic stay imposed in this case expired as to all creditors on July 16, 2015. As the automatic stay has long ago expired in this case and is no longer in effect, the court intends to deny the motion as moot.

The court will hear the matter.

47. 15-27550-D-7 WILLIE WYNN
ADR-1
PETER GOLCHERT VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
10-8-15 [14]

Final ruling:

This motion has been resolved by a civil minute order entered on November 6, 2015. Matter removed from calendar.

48. 15-28060-D-11 ACADEMY OF PERSONALIZED LEARNING, INC.

ORDER TO SHOW CAUSE
10-27-15 [49]

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

49.	15-28060-D-11 DM-1	ACADEMY OF PERSONALIZED LEARNING, INC.	MOTION FOR ORDER APPROVING STIPULATION REGARDING NON-ESTATE AND ESTATE PROPERTY BY AND BETWEEN ACADEMY OF PERSONALIZED LEARNING, INC. AND CHARTER ASSET MANAGEMENT FUND, L.P. 11-4-15 [79]

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

Tentative ruling:

This is the motion of Charter Asset Management Fund, L.P. ("CAM"), for an order approving a stipulation between it and the debtor. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court would ordinarily entertain opposition, if any, at the hearing. However, the court has preliminary concerns.

CAM states the motion is brought pursuant to § 105(a) and LBR 9019-1, which governs stipulations. In general, the rule governs stipulations affecting only the parties to the stipulation, such as a stipulation resolving a motion for relief from stay. Here, however, the more applicable rule is Fed. R. Bankr. P. 9019(a). The court has earlier in this case expressed concerns about the meaning and effect of a pre-petition Master Factoring Agreement between CAM and the debtor. According to the motion, the parties have entered into the stipulation in order "[t]o clarify the Parties' rights and obligations under the Factoring Agreement post-bankruptcy." Mot. at 3:11-12. In fact, the stipulation purports to "clarify" that certain assets are property of the bankruptcy estate and others are not. CAM states the stipulation "will assist the administration of the Bankruptcy Case and provide all parties in interest notice and knowledge of what is estate property." Id. at 5:7-9.

These are the types of issues that, had the parties not resolved them, would likely have required the initiation of an adversary proceeding. See Fed. R. Bankr. P. 7001(2). Each party to the stipulation is also giving up certain rights it arguably had or acquiring rights it arguably did not have under the Factoring Agreement, as opposed to merely clarifying semantic deficiencies in the Factoring Agreement. In short, it appears the stipulation is a compromise of substantial rights and obligations affecting the estate as a whole and all creditors. Thus, the motion should have been noticed to all creditors, as required by Fed. R. Bankr. P. 9019(a) and 2002(a)(3), and analyzed as a compromise under the factors set forth in In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). In addition, in general, only a trustee or, by operation of § 1107(a) of the Bankruptcy Code, a debtor-in-possession may bring a motion to approve a compromise (see Fed. R. Bankr. P. 9019(a)), whereas here, there has been no consideration of that general rule and no analysis of whether there is sufficient reason to allow an individual creditor to bring the motion. See Wells Fargo Bank, N.A. v. Guy F. Atkinson Co. (In re Guy F. Atkinson Co.), 242 B.R. 497, 503 (9th Cir. BAP 1999).

CAM failed to serve (1) the ten creditors listed as "litigants" on an amended Schedule F filed November 6, 2015; and (2) three of the seven parties listed on Schedule G filed October 29, 2015. These latter three were Columbia Elementary School District, Webb B. Morrow Jr. Living Trustee, and OPS. Further, CAM has offered no analysis of the stipulation as a compromise under the Woodson factors, and no explanation of why the motion was brought by CAM rather than the debtor. For these reasons, the court intends to deny the motion. In the alternative, the court

will consider continuing the hearing to permit the debtor to join in as a moving party, to permit the service defects to be cured, and to permit the debtor to present an analysis as to whether the compromise represented by the stipulation is fair and equitable in light of the Woodson factors.

The court will hear the matter.

50.	15-28060-D-11 MLA-4	ACADEMY OF PERSONALIZED LEARNING, INC.	MOTION TO EMPLOY MITCHELL L. ABDALLAH AS ATTORNEY(S) 10-28-15 [62]

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

Tentative ruling:

This is the debtor's motion to employ the Abdallah Law Group, P.C. ("ALG") as bankruptcy counsel in this case. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns.

The supporting declaration of Mitchell Abdallah is insufficient to permit the court to conclude that ALG does not hold or represent an interest adverse to the estate and that ALG is a disinterested person, both as required by § 327(a) of the Bankruptcy Code. In this regard, Mr. Abdallah testifies as follows:

- **I reviewed the list of creditors in this case and caused a conflict check to be run against ALG's list of clients and opposing parties to determine whether any actual or potential conflict appeared to exist. I determined that no conflicts exist.**

- **To the best of my knowledge, ALG is not representing Academy of Personalized Learning, Inc. in other ongoing bankruptcy cases.**

- **I am unaware of any conflict, association, relationship or connection between ALG and the Debtor, any other creditors of the Debtor, any other parties in interest, their respective attorneys and accountants, the Chapter 11 Trustee, except as provided herein.**

- **To the best of my knowledge, each member of ALG is a disinterested person within the meaning of § 101(14) of the United States Bankruptcy Code.**

- **To the best of my knowledge, ALG:**

  a) Is not a creditor, an equity security holder, or an insider of the Debtor.

  b) Is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the Debtor;

c) Does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor; and

d) Does not have any connection with the U.S. Trustee, or any person employed in the Office of the U.S. Trustee.

Abdallah Decl., filed Oct. 28, 2015, at 2:3-22.

This testimony demonstrates a misunderstanding of ALG's role in the employment process. The determinations whether ALG has actual or potential conflicts of interest, whether it is a disinterested person, and whether it has any adverse interests are not ALG's to make; they are the court's. (ALG is referred to the court's ruling in In re Sundance Self Storage-El Dorado LP, 482 B.R. 613 (Bankr. E.D. Cal. 2012), for particulars as to this distinction.) ALG's role is merely to disclose all of its connections with the debtor, including the debtor's principals, with creditors, with other parties in interest, and with their respective attorneys and accountants, and with the United States Trustee and persons employed by the United States Trustee. Fed. R. Bankr. P. 2014(a).

This Mr. Abdallah has not done adequately. According to ALG's attorney's disclosure statement filed with the debtor's schedules on October 29, 2015, "[p]rior to the Bankruptcy filing, Attorney offset the sum of $12,606.50, which was for all pre-Bankruptcy Services . . ., leaving a retainer deposit of $37,393.50 . . . ." DN 67, p. 43. This information reveals that ALG represented the debtor prior to the filing of the case and received and applied $12,606.50 to earned fees and costs. These are connections that were required to be disclosed in the declaration supporting this motion.

Further, although Mr. Abdallah states he ran a "conflicts check" on parties listed on the debtor's list of creditors (which has since been expanded by the filing of amended Schedules F and G), he does not indicate he undertook any sort of a search to determine whether connections exist between the employees of his firm, on the one hand, and the debtor's creditors, on the other hand, or between himself or his employees, on the one hand, and the debtor's principals, other parties in interest, or their respective attorneys and accountants, on the other hand. Instead, he simply states he is unaware of any connections.[1]

The court has two other concerns. First, Mr. Abdallah states the debtor paid ALG a pre-petition retainer of $50,000 "on or about" October 15, 2015. As October 15, 2015 was the petition date, Mr. Abdallah's statement is too imprecise. He will need to disclose the date ALG received the payment, whether it was in the form of a personal check or certified funds, and if a personal check, when the check cleared, what he meant by "offset[ting] the sum of $12,606.50" in the attorney's disclosure statement, and when the $12,606.50 was actually taken out of ALG's client trust account and deposited into an account belonging to ALG. These facts are critical to the court's determination of whether ALG was a creditor at the time of the filing and whether it received a post-petition payment.

Second, in the attorney's disclosure statement, Mr. Abdallah has crossed out the following as services he has agreed to render in the case: "Representation of the debtor in adversary proceedings and other contested bankruptcy matters." Pursuant to LBR 2017-1(a)(1), as to contested matters, the striking of the quoted

language from the attorney's disclosure statement was inappropriate. Mr. Abdallah will need to confirm he understands his representation will include contested matters.

One final point of procedure. The notice of hearing states initially that the motion is noticed pursuant to LBR 9014-1(f)(2), and the notice quotes that rule. The notice adds, however, that oppositions, if any, must be served upon the debtor's attorney and all other parties listed in the proof of service of the motion. There is no requirement for (f)(2) motions that potential respondents file or serve anything; the suggestion that oppositions, if any, must be served is inappropriate.

The court will hear the matter.

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1 His "verified statement" at the end of his declaration – "Except as set forth above, I have no connections with the debtor, creditors, or any party-in-interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee" – is insufficient for two reasons. First, as discussed above, it is inaccurate. Second, by using the word "I", Mr. Abdallah assumes he is the "person" the court must find to be a disinterested person whereas that "person" also includes ALG.

51.	15-27561-D-7 TJP-1 GATEWAY ONE LENDING AND FINANCE VS.	SIMONAE BARRY	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-23-15 [14]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the property is not listed by the debtor and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

52.	12-40862-D-7 HLG-2	ALEJANDRO VEGA	MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB 10-26-15 [19]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by American Express Bank, FSB (the "Bank"). The motion will be denied for the following reasons. First, the motion was signed and filed by an attorney who is not the debtor's attorney of record in this case and who has not substituted in to the case on behalf of the debtor.

Second, the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank (1) by certified mail through the attorneys who obtained its abstract of judgment; (2) by certified mail to the attention of an "Officer or managing agent for service of process" at the address of the agent for service of process of American Express Centurion Bank, as registered with the California Secretary of State; and (3) by first-class mail to a post office box address with no attention line.

The first method was insufficient because there is no evidence the attorneys are authorized to accept service of process on the Bank's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of "Officer or managing agent for service of process" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous. Further, an FDIC-insured institution must be served to the attention of an officer whereas it is unlikely an officer of the Bank is to be found at the location of a corporate agent for service of process.

The third method was insufficient because service on an FDIC-institution, such as the Bank, must be by certified mail to the attention of an officer, whereas here, service was by first-class mail and there was no attention line.

Third, the moving party gave only 23 days' notice as opposed to 28 days', as required for notices such as this one, purporting to require the filing of written opposition at least 14 days prior to the hearing date.

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

53. 15-28075-D-7 LENNA JACKSON — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-30-15 [12]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

54. 15-27880-D-7 KRISTIN SMITH — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
VVF-1
AMERICAN HONDA FINANCE CORPORATION VS.
10-23-15 [14]

55. 15-28094-D-7 BRADY KING
WAJ-1
CHARLES SIMPSON VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-15 [19]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor's Statement of Intentions indicates he intends to surrender the collateral and the trustee has filed a statement of non-opposition. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.