UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 30, 2016 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

1.	16-27000-D-7 FRANK CARRANZA ADR-1 WILLIAM KEEGAN VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 11-1-16 [12]

Final ruling:

This matter is resolved without oral argument. This is William Keegan's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that debtor had only a pre-petition leasehold interest in the property that is the subject of this motion and the debtor is not paying post-petition rent. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay. As the debtor is not paying his post-petition rent the court will also waive FRBP 4001(a)(3). Moving party is to submit an appropriate order. There will be no further relief afforded. No appearance is necessary.

2.	15-00203-D-0	OPUS WEST CORPORATION **CLOSED: 12/07/2015**	ORDER TO APPEAR FOR EXAMINATION (GREGORY WATSON, CEO) 10-13-16 [11]

3.	13-33804-D-7 RSS-5	RHONDA STIJAKOVICH-SANTILLI	OBJECTION TO CLAIM OF CYNTHIA POSEHN VANHORNE 10-5-16 [207]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection to Claim No. 3 has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtor's objection to the claim of Cynthia Posehn Vanhorne, Claim No. 3, and allowing the claim in the amount of $600. No appearance is necessary.

4.	15-23511-D-7 15-2150 BAKER V. COURTNEY	SCOTT COURTNEY MCA-1	MOTION BY MARK A. CAMPBELL TO WITHDRAW AS ATTORNEY 10-24-16 [50]

Tentative ruling:

This is the motion of Mark Campbell ("Counsel") to withdraw as counsel for the plaintiff in this adversary proceeding, Jennifer Baker. The motion was brought pursuant to LBR 9014-1(f)(1) and no opposition has been filed. Thus, the court is inclined to grant the motion but has the following concerns.

The motion states that the 14-day notice period provides the client an opportunity to obtain replacement counsel. This raises a question concerning the continued representation of the plaintiff by Stephen M. Reynolds and the Reynolds Law Corporation, who filed the complaint commencing this adversary proceeding as co-counsel for the plaintiff. The most recent document filed in the case before this motion was an opposition to the defendant's motion to dismiss filed by both Mr. Reynolds and Mr. Campbell as co-counsel for the plaintiff. Mr. Reynolds has not sought to withdraw as counsel for the plaintiff or substituted out and, as such, he will remain as the attorney of record for plaintiff. This point will need to be clarified.

Second, the moving papers do not state the current or last known address of the client and do not describe the efforts made to notify the client of the motion to withdraw, as required by LBR 2017-1(e). (If the proof of service of the motion were sufficient to comply with the rule, the rule would be unnecessary.)

The court will hear the matter.

5.	11-39615-D-7 BHS-4	TERI HOGLUND	MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEE'S ATTORNEY 11-1-16 [50]

Final ruling:

This 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) except the additional "up to $400" requested for completing the motion, responding to possible opposition, and appearing at the hearing. (The fees being approved include fees for 1.9 hours for preparing the motion.) Except for that additional "up to 400," the court will grant the motion and the moving party is to submit an appropriate order. No appearance is necessary.

6.	14-25820-D-11 DMC-28	INTERNATIONAL MANUFACTURING GROUP, INC.	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PENELOPE BETHEL, DAVID BURKE, AND NANCY PEDERSON AND/OR MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIAMOND MCCARTHY LLP FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL(S) 11-2-16 [957]

7.	14-25820-D-11 16-2090 BN-2 MCFARLAND V. CALIFORNIA BANK & TRUST ET AL	INTERNATIONAL MANUFACTURING GROUP, INC. 9-21-16 [85]	CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING

Tentative ruling:

This is the motion of defendant ZB, N.A. (the "Bank") to dismiss the first amended complaint ("Amended Complaint") of the plaintiff, Beverly McFarland, who is also the trustee in the chapter 11 case in which this adversary proceeding is pending (the "trustee"), pursuant to Fed. R. Civ. P. 12(b)(6), made applicable in this proceeding by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. The trustee has filed opposition, the Bank has filed a reply, the parties have submitted supplemental briefs on a discrete issue, and the court has heard oral argument. For the following reasons, the court will submit the following, together with its earlier tentative ruling, included in the minutes for October 19, 2016, DN 121, which the court incorporates by reference herein (except where it conflicts with this ruling), to the district court with the recommendation that the motion be granted in part.

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

I. The Statute of Repose

Based on its earlier tentative ruling and the supplemental briefs of the parties, the court concludes that the seven-year statute of repose for fraudulent transfer actions under California law requires dismissal of Count 10 of the Amended Complaint and dismissal of Count 9 as to the five obligations incurred by IMG in favor of the Bank more than seven years before the commencement of IMG's chapter 11 case.[1] As to the security interests (Count 10), the issue boils down to three questions. Could the Bank take a security interest in IMG's deposit accounts to secure the repayment of future advances? If so, was the language of the parties' 2007 Business Loan Agreement sufficient to create a security interest? And finally, if so, did that security interest have priority over the holder of an unsecured creditor under California law, in whose shoes the trustee stands under § 544(b)(1) of the Bankruptcy Code? The court answers all three questions in the affirmative.

The first and third questions are readily answered and the trustee appears to concede them. Under the UCC, "[a] security agreement may provide that collateral secures . . . future advances . . . ." Cal. Comm. Code § 9204(c). As to the priority of the Bank's security interest in deposit accounts with the Bank, perfected by the Bank's control of those accounts, on the one hand, and the interest of an unsecured creditor, on the other hand, the Bank's supplemental brief walks through the relevant UCC sections and the court adopts that analysis herein. This leaves the second question – the sufficiency of the parties' 2007 Business Loan Agreement. The trustee argues that "the Business Loan Agreement is not sufficiently clear, as a matter of law, to create a valid and enforceable security interest under the UCC with respect to future loans." Trustee's Supp. Opp., DN 135, at 1:24-25. The trustee cites sample form sources for her conclusion that a valid security interest securing future advances "is normally accomplished through the inclusion of a specific future advance clause" (id. at 2:3-4, citing Uniform Law Annotated, Uniform Commercial Code Forms and Materials and West's Legal Forms), and suggests the Business Loan Agreement is invalid because it does not include such a standard clause and does not contain the words "future advances." She cites no authority, however, for the proposition that such a standard clause or the use of the words "future advances" is required to create a valid security interest securing future advances.

In the trustee's view, getting to the notion of future advances in the

Business Loan Agreement "requires drilling down through three layers of definitions set forth in the entirely separate 'Definitions' section of the [agreement]." Trustee's Supp. Opp. at 2:16-17. The court is not sure what is meant by the suggestion that the Definitions section of the agreement is "entirely separate." It is unequivocally part of the agreement. In any event, however, the court does not consider the analysis to be complex or convoluted, as the trustee suggests, but rather, not uncommon for commercial loan documents. The agreement itself (not the Definitions section) begins with these statements:

> Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement.
>
> TERM. This Agreement shall be effective as of February 20, 2007, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, [etc.], or until such time as the parties may agree in writing to terminate this Agreement.

Bank's Ex. F-2, DN 90, at p. 1 (emphasis added). These initial provisions, together with the language by which IMG granted the Bank a security interest in IMG's deposit accounts at the Bank and the definitions in the Definitions section of the agreement, discussed below, were sufficient to create in favor of the Bank a security interest securing future advances.

The Business Loan Agreement includes this grant of a security interest: "Borrower hereby grants a security interest to Lender in any and all deposit accounts (checking, savings, money market or time) of Borrower at Lender, now existing or hereinafter opened, to secure the Indebtedness." Bank's Ex. F-2 at p. 4.[2] The agreement defines "Indebtedness" as "the indebtedness evidenced by the Note or Related Documents, including all principal and interest . . . for which Borrower is responsible under this Agreement or under any of the Related Documents." Id. at 6. "Note," in turn, means "the Note executed by [IMG] in the original principal amount of $250,000.00 dated July 14, 2005, together with all renewals of, extensions of, . . . and substitutions for the Note or Credit Agreement or any other subsequent Notes evidencing future indebtedness." Id. at p. 6 (emphasis added). "Related Documents" means "all promissory notes, credit agreements, loan agreements, . . . security agreements, . . . and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan." Id. at 7 (emphasis added). Finally, "Loan" means "any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced . . . ." Id. at 6 (emphasis added).[3]

Despite these references to "any other subsequent Notes evidencing

future indebtedness," to "all promissory notes, credit agreements, loan agreements, and security agreements, whether now or hereafter existing," and to "any and all loans whether now or hereafter existing," and despite the references in the opening paragraphs of the agreement to "any Loan," "all such Loans," and "all of Borrower's Loans" as being subject to the terms of the agreement, the trustee contends a lay person borrower "would have no idea that the clause purportedly granting a security interest could apply to future obligations" (Trustee's Supp. Opp. at 2:27-28) without some unusual mental gymnastics. The court need not decide the issue because, first, the trustee cites no authority that the court is to construe the agreement through the eyes of a hypothetical lay person, and second, IMG was no lay person. As the complexity of Deepal Wannakuwatte's Ponzi scheme, as alleged in the Amended Complaint, evidences, IMG was a sophisticated borrower chargeable with understanding the Business Loan Agreement as creating a security interest in the Bank's favor in all of IMG's accounts at the Bank to secure all loans, including future loans, made by the Bank to IMG, including those made within the seven years prior to the petition date.

The trustee contends the parties' course of conduct was inconsistent with the conclusion that the Business Loan Agreement was intended to cover future advances. The trustee cites the fact that the parties entered into a similar "Business Loan Agreement" each time a new loan was made. She concludes the parties would not have done that if they had believed the February 2007 Business Loan Agreement was sufficient to secure the new loans. The argument is unpersuasive. First, the court views it as not uncommon for a lender to require new loan documents each time a new loan is made, and this is merely a reflection of the lender trying to cover all of its bases. Second, the February 2007 Business Loan Agreement defines the "Agreement" as "this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time . . . ." Bank's Ex. F-2 at p. 6. Each Business Loan Agreement also included a statement that it "amends and restates" the prior one. For example, the Business Loan Agreement the court has referred to throughout this ruling states, "This Business Loan Agreement amends and restates the prior Business Loan Agreement dated February 5, 2007, as amended from time to time." Id. at p. 5. Thus, the additional Business Loan Agreements were not separate agreements at all; they were merely amendments to the original one. The trustee's conclusion that the additional agreements reflected an understanding that the original one did not cover future advances fails.

Finally, the trustee contends "a future advance clause or dragnet clause is only enforceable under California law to the extent that the language of the security agreement and the parties' conduct establishes a clear understanding on the part of both parties that the security interest will secure other obligations. There is no such clarity here." Trustee's Supp. Opp. at 4:13-16. The trustee cites three cases for the proposition that the critical question is the intent of the parties. See Fischer v. First Internat. Bank, 109 Cal. App. 4th 1433 (2003); In re Kim, 256 B.R. 793, 796 (Bankr. S.D. Cal. 2000); New West Fruit Corp. v. Coastal Berry Corp., 1 Cal. App. 4th 92, 99 (1991)). The Kim court held that intent is to be determined

by tests it called the 'relationship of loan' and 'reliance on the security' tests (see Kim, 256 B.R. at 797); that is, by whether the two loans relate to each other and whether the creditor made the second loan in reliance on the original security. Id. at 798.[4] Citing Cal. Comm. Code § 1201(b)(3),[5] the court in New West Fruit held that intent is to be determined by reference to the parties' language or course of performance, course of dealing, or usage of trade. 1 Cal. App. 4th at 99.

In the court's view, these are the types of issues that must have necessarily been raised in a challenge to the validity or enforceability of a security interest before the expiration of the statute of repose. That is, they are questions a statute of repose and probably the less harsh statute limitations as well are designed to preclude. Neither Kim nor New West Fruit involved a challenge to a security interest after the statute of repose had expired. 2002 Cal. App. Unpub. LEXIS 7478. Nor did the third case cited by the trustee, Fischer v. First Internat. Bank, 109 Cal. App. 4th 1433 (2003).[6]

For the reasons discussed above, the court concludes that Count 10 of the Amended Complaint should be dismissed in its entirety because the security interests granted by way of the February 20, 2007 Business Loan Agreement were granted outside the seven-year period of the statute of repose, and therefore, are not subject to attack. This ruling applies to the security interests securing all of the Bank's loans to IMG, including, as a result of the future advances language, those made within the seven-year period. The ruling also applies to Count 9 as to IMG's obligations incurred more than seven years prior to the commencement of the chapter 11 case; as to those five obligations, Count 9 should be dismissed. Similarly, Counts 1, 2 and 4 should be dismissed with respect to repayments made to the Bank on loans made to IMG outside the seven-year period, as those repayments were made from the Bank's own collateral, and thus, under First Alliance Mortgage, they are not subject to attack. In short, as to Count 10, as to those portions of Count 9 concerning obligations incurred outside the seven-year period, and as to those portions of Counts 1, 2, and 4 concerning repayments on those obligations, accepting as true all facts alleged in the Amended Complaint and drawing all reasonable inferences in favor of the trustee, the court concludes that when viewed in light of the seven-year statute of repose of Cal. Civ. Code § 3439.09(c), the complaint does not contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" The trustee has suggested no way in which she could, by amendment to the complaint, overcome the statute of repose with respect to the security interests or those five obligations; thus, amendment would be futile, and the trustee's request for leave to amend should be denied. See Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1051 (9th Cir. 2008).

Finally, however, the trustee contends that even if the seven-year statute of repose would otherwise dictate dismissal of Count 10 – the claim to avoid the security interests, Count 9 salvages the situation. The argument is premised on what the trustee calls "the black letter principle of law that a security interest or lien is of no legal effect in the absence of

an underlying, valid and enforceable obligation." Trustee's Opp. at 21:2-4. Thus, in the trustee's view, "Count 9 paves the way for the Trustee to avoid transfers to [the Bank] by eliminating an essential condition necessary for a security interest to be valid and enforceable." Id. at 2:22-23. The court agrees as to those obligations incurred within the seven-year period but not as to those incurred outside that period because those obligations are themselves immune from attack under the statute of repose.

The trustee is correct that with respect to the obligations incurred within the seven years prior to the filing of the chapter 11 case, the statute of repose does not apply. This is because, as the trustee argues, a creditor must be owed a valid and enforceable obligation before it may enforce a security interest, even a security interest that is valid with respect to future advances. In other words, if the obligation incurred on account of the future advance fails, the security agreement providing for security for the future advance is left with nothing to secure. As the trustee phrases it, "[a] secured party has no rights to a debtor's assets above and beyond the amount that is owed." Trustee's Supp. Opp. at 1:14-15.

The Bank argues that "[e]ven if those obligations [the ones incurred within the seven-year period] were hypothetically avoidable . . . , the liens on the IMG Deposit Accounts would not evaporate automatically – they would still need to be avoided. But under the 7-year statute of repose and its effect on Count 10 pursuant to the subsequent advance clauses in the 2/20/2007 [Business Loan Agreement], it is simply too late to avoid these liens." Bank's Supp. Brief, DN 133, at 3:14-19. The Bank is not correct that if the trustee succeeds in avoiding the obligations incurred within the seven-year period, she would then also have to avoid the security interest purporting to secure those obligations. This is because there would simply be no such obligations. By way of the Business Loan Agreement, as quoted above, IMG granted the Bank a security interest in its deposit accounts "to secure the Indebtedness," and "the Indebtedness" is defined as "the indebtedness evidenced by the Note or Related Documents, including all principal and interest . . . for which Borrower is responsible under this Agreement or under any of the Related Documents." If the obligations are avoided, as the trustee seeks in Count 9, the responsibility for those obligations is avoided and, insofar as those particular loans are concerned, there is no "Indebtedness" for the security interest to secure. Thus, the court will recommend the motion be denied as to Count 9 insofar as it pertains to the loans made by the Bank to IMG within the seven years prior to the filing of the chapter 11 case.

II. Relation Back of Count 9 [7]

Citing § 546(a) of the Bankruptcy Code, the Bank contends Count 9 must be dismissed as having been filed more than two years after the petition date. The trustee contends, on the other hand, the allegations in the Amended Complaint are sufficiently connected to those in the original complaint to permit the Amended Complaint to "relate back" to the original, for purposes of § 546(a). "An amendment to a pleading relates back to the

date of the original pleading when: . . . the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading." Fed. R. Civ. P. 15(c)(1), incorporated herein by Fed. R. Bankr. P. 7015. The court is to find the necessary connection if "the claim to be added will likely be proved by the 'same kind of evidence' offered in support of the original pleadings.'" Markus v. Gschwend (in Re Markus), 313 F.3d 1146, 1150 (9th Cir. 2002) (citations omitted). The critical issue is one of fair notice to the defendant. "Thus, amendment of a complaint is proper if the original pleading put the defendant on notice of the 'particular transaction or set of facts' that the plaintiff believes to have caused the complained of injury. Fairness to the defendant demands that the defendant be able to anticipate claims that might follow from the facts alleged by the plaintiff." Percy v. San Francisco General Hospital, 841 F.2d 975, 979 (9th Cir. 1988).

In this case, the Bank contends new Count 9 pertains to entirely different transactions from those alleged in the original complaint. The Bank relies heavily on O'Cheskey v. CitiGroup Global Mkts., Inc. (In re Am. Hous. Found.), 543 B.R. 245 (Bankr. N.D. Tex. 2015), in which the court found a trustee's amended complaint to avoid allegedly fraudulent obligations did not relate back to his original complaint to avoid loan repayments. 543 B.R. at 262. Specifically, the court found the amended complaint alleged "facts that differ in both time and type" from those in the original complaint and that the original complaint gave no notice of the trustee's intent to seek to avoid the underlying obligations. Id. Unlike in that scenario, however, the trustee's original complaint in the present case, although it did not purport to state a claim to avoid the underlying obligations, did set forth in extensive detail factual allegations about the banking relationship between IMG and Wannakuwatte, on the one hand, and the Bank, on the other, from the very inception of the relationship. In contrast, in O'Cheskey, "the [original] complaint [made] no reference to a relationship between [the debtor and the defendant] beyond two years prior to the petition date." 543 B.R. at 262.

In the present case, the original complaint set forth virtually all of the factual allegations that are now summarized in Count 9. In other words, Count 9 did nothing more than add a theory of relief based on the same transactions and other factual circumstances alleged in the original complaint. The Bank complains that the original complaint did not give the Bank any indication the trustee would seek to avoid the underlying obligations. However,

> Rule 15 does not require that a pleading give notice of the exact scope of relief sought. Rather, it must give fair notice of the transaction, occurrence, or conduct called into question. So long as a party is notified of litigation concerning a particular transaction or occurrence, that party has been given all the notice that Rule 15(c) requires. When a defendant is so notified, the defendant knows that the whole transaction described in it will be fully sifted, by amendment if need be, and that the form of the

> action or the relief prayed or the law relied on will not be confined to their first statement.

Asarco, LLC v. Union Pac. R.R. Co., 765 F.3d 999, 1006 (9th Cir. 2014) (citations omitted). The trustee's original complaint included many allegations about IMG's conduct as regards the Bank and Bank's conduct toward IMG, from and including the times the various promissory notes were signed. Thus, the court has no hesitation in concluding that the Bank had fair notice of the possibility the trustee would assert claims for relief arising out of those factual allegations, and the amended complaint relates back to the date of the original one.

III. Remedies for Avoidance of an Obligation

The Bank next contends the sole remedy available to a trustee upon avoidance of an obligation, as opposed to avoidance of a transfer, is that the obligation will be disallowed as a claim against the estate. Thus, because IMG's obligations to the Bank were all repaid prior to the filing of the petition and are no longer "extant," to use the Bank's term, there is no remedy available to the trustee. The Bank cites several cases and treatises suggesting the remedy for the avoidance of an obligation is the disallowance of the obligation as a claim against the estate and that the obligation is not deemed void for all purposes. The Bank highlights this language from a comment to the Uniform Voidable Transactions Act ("UVTA"): "'Avoidance' is a term of art in this Act, for it does not mean that the transfer or obligation is simply rendered void . . . '[A]voidance' of an obligation under subsection (a)(1) likewise should not mean its cancellation, but rather a remedy that recognizes the existence of the obligation and the superiority of the plaintiff creditor's claim against the debtor") (emphasis added)." Bank's Memo. at 45:9-13, quoting UVTA, § 7, cmt. 7 (2014).

It may be that in some situations, the disallowance of the obligation as a claim against the estate will be the only practical consequence of avoiding the obligation. Here, however, there is an additional logical consequence: avoidance of the obligations incurred by IMG to the Bank would mean the repayments made on those obligations – the payments the trustee seeks to avoid and recover in Counts 1, 2, and 4 – were repayments on invalid and unenforceable obligations; that is, obligations not covered by the future advances language in the Business Loan Agreement. Thus, to the extent the obligations, if they are avoided, would retain any viability at all, they would be unsecured obligations, not secured obligations, and the Bank's First Alliance Mortgage defense, which is the crux of its motion, would not apply.

The trustee cites language in comment 7 to the UVTA that was omitted in the Bank's quotation, cited above. As quoted by the trustee, immediately following the language about the "superiority of the plaintiff creditor's interest over the obligee's interest," the comment states: "That [avoidance of the obligation] would entail disgorgement by the obligee of any payments received or receivable on the obligation, to the extent necessary to satisfy the plaintiff creditor's claim, with the obligee being subrogated to the

plaintiff creditor when the latter's claim is paid." Trustee's Opp. at 32:4-6, quoting UVTA, § 7, cmt. 7. The trustee also quotes Collier: "[I]f the court avoids an obligation under section 548 or it is otherwise not binding on the debtor, transfers made by the debtor on account of that obligation are not made for reasonably equivalent value, and may be set aside as actually or constructively fraudulent if the other requirements for actual or constructive fraud are met." Id. at 32:22-33:1, quoting 5 Collier on Bankruptcy ¶ 548.03[4][a], (Alan N. Resnick & Henry J. Sommer eds., 15th ed. 2015). If the trustee succeeds in avoiding the incurring of the obligations themselves as fraudulent obligations, which is what the trustee is trying to do in Count 9, the obligations will be rendered invalid and unenforceable, and repayments made on those obligations may similarly be avoidable and/or recoverable. If the trustee does not succeed in avoiding the obligations, they will be subject to the future advances language in the Business Loan Agreement, and therefore, not subject to attack under First Alliance Mortgage, even though the obligations themselves were incurred within the seven years prior to the filing of the bankruptcy case.

Next, the Bank cites two cases holding that a transfer of property that has already been reversed by the parties to the transfer cannot subsequently be avoided by a creditor of the transferor under California fraudulent transfer law. See Kelleher v. Kelleher, 2015 U.S. Dist. LEXIS 131723, *24 (N.D. Cal. 2015). The theory is that the "reversal" of the transfer by the original parties put them back in their original positions – a "no harm, no foul" argument. See id.; see also Lassman v. Patts (In re Patts), 470 B.R. 234, 243 (Bankr. D. Mass. 2012) ["Simply stated, the transfer the Trustee seeks to avoid has already been undone and the undiminished value of the transferred asset has been restored to the bankruptcy estate. Accordingly, any 'recovery' for the benefit of the estate has already been completed, albeit by the Debtor and Patts."]. The Bank posits that, as in those cases, when IMG repaid the Bank, the obligations the trustee seeks to avoid in Count 9 were extinguished or "reversed," leaving nothing for the trustee to avoid.

The cases are distinguishable and the argument is flawed because the pre-petition reversal of a transfer of property out of what would, upon the filing of the bankruptcy case, become property of the estate has the effect of bringing the property back to the debtor, and therefore, upon the filing of the case, into the estate, whereas the "reversal" of an obligation by its repayment takes property out of the debtor's hands that would otherwise have become property of the estate when the case was filed. In other words, the "unwinding" of a transfer of property – by retransfer from the transferee to the transferor – likely puts the transferor back into the same position it occupied prior to the transfer. The "unwinding" of an obligation by repayment, on the other hand, when the obligation is later found to be invalid and unenforceable as a fraudulently-incurred obligation, has the effect of removing from the debtor pre-petition, and hence, from the estate once the case is filed, of the funds used to repay the obligation. The repayments do not result in the debtor, and hence, the estate being made whole.

As the trustee points out, if the obligations had been reversed shortly after IMG incurred them by IMG repaying the funds it borrowed from the Bank and the Bank cancelling the obligations, the Bank's argument would likely be more persuasive. But where, as here, the trustee alleges Wannakuwatte used the loan proceeds to further his Ponzi scheme and repaid the Bank months or years later from funds allegedly obtained from newer victims, the case "[does] not involve a de facto unwinding of transactions with no effect on third party creditors, but rather involved transactions that were directly harmful to IMG's creditors. The analogy that CBT attempts to draw to 'no harm, no foul' re-conveyance cases is thus inapposite." Trustee's Opp. at 31:20-22. The court agrees.

The Bank also argues the trustee cannot avoid the obligations (Count 9) because IMG received from the Bank loan proceeds equivalent to the amount of the debt it incurred, and therefore, IMG's balance sheet remained neutral. The argument is not appropriate in the context of a Rule 12(b)(6) motion, which serves only to test the pleadings, and especially not appropriate where, as here, the plaintiff alleges only actual, and not constructive, fraudulent transfers. In an actual fraudulent transfer case, as opposed to a constructive fraudulent transfer case, the plaintiff does not have the burden, as part of its case-in-chief, of proving the debtor did not receive a reasonably equivalent value in exchange for the transfer (compare § 3439.04(a)(1) with (a)(2) and § 3439.08(a)), although that is one of the many factors the court may consider in determining whether the transfer was made with actual intent to defraud creditors. See 3439.04(b) (non-inclusive list) and (b)(8). Instead, reasonably equivalent value is part of a two-part defense the defendant may offer, the other being that the defendant took the transfer in good faith. § 3439.08(a).

For the reasons stated, the court will submit this ruling, incorporating its earlier ruling, as its findings of fact and conclusions of law to the district court with the recommendation that the motion be granted in part and that Count 10 of the Amended Complaint be dismissed, that Count 9 be dismissed as to the five obligations incurred by IMG in favor of the Bank more than seven years before the commencement of IMG's chapter 11 case, and that Counts 1, 2 and 4 be dismissed with respect to repayments made to the Bank on loans made to IMG outside the seven-year period.

The court will hear the matter.

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1 The Bank has tangentially mentioned the four-year statute of limitations of Cal. Civ. Code § 3439.09(a); however, the Bank did not request relief based squarely on that statute and the parties' briefs are not sufficient on the issue to permit a ruling. The Bank's arguments concerning the one-year "delayed discovery" rule (§ 3439.09(a)(1)) are more suited to a motion for summary judgment than a motion to dismiss.

2 Under the UCC, with exceptions not applicable here, "[a] security agreement may create or provide for a security interest in after-acquired collateral." Cal. Comm. Code § 9204(a).

3 The trustee cites State Bank of Toulon v. Covey (In re Duckworth), 2012 Bankr. LEXIS 1219, 2012 WL 986766, *6 (Bankr. C.D. Ill. March 22, 2012), in which the court considered an identical definition of "Indebtedness" and an almost identical definition of "Related Documents," and concluded the definitions were circular because the former referred to the latter and the latter to the former. See 2012 Bankr. LEXIS at *18-19. The case is distinguishable for at least two reasons. First, whereas in Duckworth, "Related Documents" meant "all documents executed in connection with the Indebtedness," here, it means "all documents executed in connection with the Loan," the term "Loan" being defined here as "any and all loans . . . whether now or hereafter existing." (In Duckworth, "Loan" was not mentioned as a defined term.) Second, although "Indebtedness" in both Duckworth and the present case means "the indebtedness evidenced by the Note or Related Documents," the definition of "Note" in Duckworth included only "the Note . . . dated December 13, 2008" (and renewals, extensions, and so on), whereas in this case, "Note" means "the Note . . . dated July 14, 2005 . . . or any other subsequent Notes evidencing future indebtedness." The trustee's citation of Marques v. Bank of Am., N.A. (In re Marques), 2008 Bankr. LEXIS 4921, 2008 WL 4286998, *7 (Bankr. E.D. Pa. Sept. 16, 2008), fails for the same reason. See 2008 Bankr. LEXIS 4921, at *24-25.

4 The use of those tests was rejected with the 2001 revisions to the UCC. See Frontier Fin. Credit Union v. Dumlao (In re Dumlao), 2011 Bankr. LEXIS 4315, *13-15 (9th Cir. BAP Aug. 5, 2011); Kim, 256 B.R. at 797, n.4.

5 "'Agreement,' as distinguished from 'contract,' means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 1303." Cal. Comm. Code § 1201(b)(3).

6 That case is distinguishable in any event from the present case in that it concerned a "dragnet" clause in a consumer deed of trust on the borrower's residence, not a security agreement governed by the UCC. "Because a dragnet clause is one of the provisions 'least likely' to be understood by a layperson reading the fine print of a deed of trust, California limits the enforcement of such a provision 'to those transactions where objective evidence discloses the intention of the debtor and the creditor to enlarge the lien to include other obligations.'" 109 Cal. App. 4th at 1445 (citation omitted). The trustee has cited no authority for the proposition that similar considerations apply to security agreements under the UCC and no persuasive argument for the position that such considerations should apply.

7 The Bank raised this argument with respect to both Count 9 and Count 10. However, because the court will recommend dismissal of Count 10 in its entirety based on the statute of repose, the court will limit this discussion to Count 9.

8. 16-24321-D-12 DBL-4 — PAUL SCHMIDT — MOTION TO VALUE COLLATERAL OF STEVE RAUMUSSEN 10-31-16 [24]

9. 16-23638-D-7 DMW-4 — MICHAEL NICHOLS — MOTION TO SELL 11-1-16 [35]

10. 10-42050-D-7 HLC-11 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF FULBANI CHAND, CLAIM NUMBER 11 10-15-16 [708]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Fulbani Chand, Claim No. 11 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 11. Moving party is to submit an appropriate order. No appearance is necessary.

11. 10-42050-D-7 HLC-112 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF NAVIN NARAYAN, CLAIM NUMBER 112 10-15-16 [750]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Navin Narayan, Claim no. 112 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 112. Moving party is to submit an appropriate order. No appearance is necessary.

12. 10-42050-D-7 HLC-118 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF MUKESH NARAYAN, CLAIM NUMBER 118 10-15-16 [756]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Mukesh Narayan, Claim No. 118 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 118. Moving party is to submit an appropriate order. No appearance is necessary.

13. 10-42050-D-7 HLC-12 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF BIRENDRA SINGH, CLAIM NUMBER 12 10-15-16 [714]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Birendra Singh, Claim No. 12 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 12. Moving party is to submit an appropriate order. No appearance is necessary.

14. 10-42050-D-7 HLC-120 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF KISHORE NAND, CLAIM NUMBER 120 10-15-16 [762]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Kishore Nand, Claim No. 120 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 120. Moving party is to submit an appropriate order. No appearance is necessary.

15. 10-42050-D-7 HLC-129 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF SWADESH CHANDRA, CLAIM NUMBER 129 10-15-16 [768]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Swadesh Chandra, Claim No. 129 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 129. Moving party is to submit an appropriate order. No appearance is necessary.

16. 10-42050-D-7 HLC-13 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF JAGDISHWAR SINGH, CLAIM NUMBER 13
10-31-16 [832]

17. 10-42050-D-7 HLC-130 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF KANIAPRAN NAIDU, CLAIM NUMBER 130
10-15-16 [774]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the o trustee's objection to the claim of Kaniapran Naidu, Claim No. 130 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 130, and the claim will be disallowed as to priority and will be allowed as a general unsecured claim. Moving party is to submit an appropriate order. No appearance is necessary.

18. 10-42050-D-7 HLC-131 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF RAJENDRA AND KULDIP SURYA, CLAIM NUMBER 131
10-17-16 [821]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Rajendra and Kuldip Surya, Claim No. 131. has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 131. Moving party is to submit an appropriate order. No appearance is necessary.

19. 10-42050-D-7 HLC-139 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF USHA KUMARI, CLAIM NUMBER 139
10-15-16 [779]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Usha Kumari, Claim No. 139 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 139. Moving party is to submit an appropriate order. No appearance is necessary.

20. 10-42050-D-7 HLC-143 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF GUNSHEICAR CEMBULI, CLAIM NUMBER 143
10-15-16 [785]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Gunsheicar Cembuli, Claim No. 143 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 143. Moving party is to submit an appropriate order. No appearance is necessary.

21. 10-42050-D-7 HLC-145 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF RAJENDRA AND KULDIP SURYA, CLAIM NUMBER 145
10-15-16 [791]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Rajendra and Kuldip Surya, Claim No. 145 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 145. Moving party is to submit an appropriate order. No appearance is necessary.

22. 10-42050-D-7 HLC-146 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF RAKESH AND SHOBHNA NARAYAN, CLAIM NUMBER 146
10-15-16 [797]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Rakesh and Shobhna Narayan, Claim No. 146 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 146, and the claim will be disallowed as to priority and will be allowed as a general unsecured claim. Moving party is to submit an appropriate order. No appearance is necessary.

23. 10-42050-D-7 HLC-148 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF UMA SINGH, CLAIM NUMBER 148
10-15-16 [802]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Uma Singh, Claim No. 148 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 148. Moving party is to submit an appropriate order. No appearance is necessary.

24. 10-42050-D-7 HLC-157 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF FAZAL DIN, CLAIM NUMBER 157 10-15-16 [808]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Fazal Din, Claim No. 157 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 157. Moving party is to submit an appropriate order. No appearance is necessary.

25. 10-42050-D-7 HLC-181 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF SUSHIL CHAND, CLAIM NUMBER 181 10-15-16 [814]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Sushil Chand, Claim No. 181 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 181. Moving party is to submit an appropriate order. No appearance is necessary.

26. 10-42050-D-7 HLC-28 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF SUDHIRRENDRA KUMAR, CLAIM NUMBER 28 10-15-16 [720]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Sudhirrendra Kumar, Claim No. 28 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 28. Moving party is to submit an appropriate order. No appearance is necessary.

27. 10-42050-D-7 HLC-41 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF RAJENDRA SINGH, CLAIM NUMBER 41 10-15-16 [726]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Rajendra Singh, Claim No. 41 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 41. Moving party is to submit an appropriate order. No appearance is necessary.

28. 10-42050-D-7 HLC-46 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF SATISH CHAND, CLAIM NUMBER 46 10-15-16 [732]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Satish Chand, Claim No. 46 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 46. Moving party is to submit an appropriate order. No appearance is necessary.

29. 10-42050-D-7 HLC-65 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF SURAJ NARAYAN, CLAIM NUMBER 65 10-28-16 [826]

30. 10-42050-D-7 HLC-80 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF ELIZABETH SINGH, CLAIM NUMBER 80 10-15-16 [738]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Elizabeth Singh, Claim No. 80 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 80. Moving party is to submit an appropriate order. No appearance is necessary.

31. 10-42050-D-7 HLC-98 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF AJAY RAM, CLAIM NUMBER 98 10-15-16 [744]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Ajay Ram, Claim No. 98 has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to Claim No. 98. Moving party is to submit an appropriate order. No appearance is necessary.

32. 16-25556-D-11 AK BUILDERS AND COATINGS, INC. CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-23-16 [1]

Final ruling:

The status conference is continued to December 14, 2016 at 10:00 a.m. to be heard with the United States Trustee's motion to convert or dismiss this case or appoint a trustee. No appearance is necessary on November 30, 2016.

33. 10-50658-D-7 RLC-3 ABRAHAN/NORMA RAMOS MOTION TO AVOID LIEN OF LEAF FINANCIAL CORPORATION 11-1-16 [24]

Tentative ruling:

This is the debtors' motion to avoid a judicial lien held by Leaf Financial Corporation ("Leaf") against two real properties the debtors owned when they filed their petition commencing this case. The notice of hearing purports to require the filing of written opposition 14 days prior to the hearing date; however, the moving parties gave only 26 days' notice of the hearing rather than 28 days', as required by LBR 9014-1(f)(1). Thus, the court will entertain opposition, if any, at the hearing.

34. 16-26060-D-7 LT-2 SUNSHINE INDEED JULIAN, INC. MOTION TO VACATE DISMISSAL OF CASE 10-26-16 [22]

DEBTOR DISMISSED: 10/12/2016

Tentative ruling:

This is the debtor's motion to vacate the court's Order Dismissing Case for Failure to Timely File Document(s), filed October 12, 2016 (the "Order"). For the following reasons, the court intends to deny the motion.

The debtor commenced this case on September 12, 2016 by filing a voluntary petition. Although the debtor, Sunshine Indeed Julian, Inc., is a corporation, the petition filed September 12, 2016 was on Official Form 101, Voluntary Petition for Individuals Filing for Bankruptcy. The debtor did not file any of the required schedules or statement on September 12, 2016; thus, the office of the court clerk issued its standard notice of incomplete filing, advising the debtor that the summary, the schedules, attorney's disclosure statement, statement re corporate debtor, and the statement of financial affairs must be received by the clerk's office by September 26, 2016.

On September 26, the debtor filed an ex parte motion to extend the time to file the schedules, statements, and other documents for a period of 14 days, to October 10. The motion was supported by a declaration, signed by Daisy Bennett as the debtor's director, who testified she caused the corporation to file petition on September 13 on an emergency basis after the debtor ceased doing business. (As indicated above, the petition was actually filed on September 12. The motion for an extension of time also misstated the date of filing.) She added that as director of the corporation, she is responsible for maintaining its books and records; she

added: "due to a brutal assault and battery by a former patient at the Facility that left me somewhat mentally impaired, and as of two months ago with possible brain leakage, it is taking me a little longer to sort through the Corporate books and records, which are presently being diligently compiled and organized as best as I can." Bennett Decl., DN 12, at 2:8-13. The court granted the motion, giving the debtor up to and including October 11 to file the schedules and other documents. The order added that no further extensions would be granted.

When the schedules and other documents were not on file by October 11, the case was dismissed. On the morning of October 12, the debtor filed a Voluntary Petition for Non-Individuals Filing for Bankruptcy, along with a summary, schedules, statement of affairs, attorney's disclosure statement, and statement re corporate debtor. In support of the present motion to vacate the dismissal, Ms. Bennett cites the same assault and battery she had earlier described, this time adding:

> Thus, it has been taking me a little longer to sort through the corporate books and records to compile the information needed by Lodi Tax Service, Inc., Debtor's Accountant, to produce a 2015 income tax return, which, in turn, was needed by Debtor's Attorney to finalize the preparation of Debtor's Schedules and Statement of Financial Affairs. Lodi Tax Service, Inc. finished said 2015 Corporate Tax Return on October 11, 2016 and remitted it to the Debtor's Bankruptcy Attorney at about 4:08 p.m. on the aforesaid date. Thereafter, I met with the Debtor's Attorney from about 6:30 p.m. to about 11:45 p.m. to go over the 2015 Tax Return and to work on completing the Missing Documents and Debtor's Attorney finalized and filed said Documents as soon as he practicably could thereafter in the early morning on October 12, 2016.

Bennett Decl., DN 24, at 2:14-26. Having reviewed the schedules and statement of affairs, the court finds this testimony to be not credible and the schedules and statement themselves to be incomplete and not credible.

Both petitions indicate the debtor's business is a health care business. The court takes judicial notice of the website of The Care Centers for the very limited purpose of determining that, according to that website, the debtor is a licensed care provider with the State of California, providing assisted living services.[1] According to the debtor's belated Schedule A/B, the debtor neither owns nor leases any real property.[2] Its only personal property is $800 in a checking account and a California license a 6-bed care facility. The debtor answered "No" in response to all the other questions in Schedule A/B. Ms. Bennett's signature verifying the schedules is thus her testimony under oath that the debtor has not only no ownership or leasehold interest in real property but no cash; no deposits; no accounts receivable; no office furniture, fixtures, equipment, computer or communications equipment, and no other property of any kind. It neither owns nor leases any machinery, equipment, or vehicles. Its records do include personally identifiable information of customers.

The debtor's creditor schedules are almost equally bare. According to the schedules, the debtor has no secured creditors. It owes $1,500 to the IRS, $1,800 to the Department of Social Services, and $35 to its attorney, Lou Tovar. The debtor also listed one Stephanie Gutierrez, in care of a law firm, as a contingent creditor on account of a "DOIR Appeal." The debtor listed the amount due as $0. That is the extent of the debtor's debts – a total of $3,335. In answer to the question on Schedule G whether it has any executory contracts or unexpired leases, the debtor answered "No." It also answered "No" to the question whether it has any

co-debtors.

The debtor's statement of affairs discloses gross income of $42,188 year-to-date in 2016, $76,442 in 2015, and $72,059 in 2014. It has made no payments to any creditors in the past 90 days totaling $6,425 or more and no payments to or for the benefit of any insider in the past year totaling $6,425 or more. It has had no property repossessed, foreclosed, or returned and no casualty losses in the past year and has made no transfers of money or other property in the past two years other than in the ordinary course of business. The debtor listed its address on the second petition as 8420 Falkirk Dr., Stockton, and indicated in the statement of affairs it has had no other addresses in the past three years. But the website cited above gives the debtor's address as 7720 Rosewood Drive, Stockton. The debtor has had no financial accounts in the past year other than the checking account listed on Schedule A/B. It has no safe deposit boxes, no property in offsite storage and holds no property for anyone else.

To the extent the debtor has operated a care facility, and based on the income listed in the statement of affairs, it has, it is simply not credible that the debtor has no ownership or leasehold interest in real property and no personal property except $800 and its State license to operate. It is not credible that the debtor has no furniture, machinery, or equipment, no supplies, no computers, no televisions, no phones, no vehicles leased or owned, or that it has transferred no such property other than in the ordinary course of business in the past two years. There is two exceptions to this almost complete dearth of information. First, the debtor has tithed about $1,100 per month to Christian Life Center in Stockton for the past two years, for a total of $26,400. Second, the debtor is the defendant in to an administrative proceeding brought by a plaintiff named Gutierrez, apparently the Stephanie Gutierrez listed in the schedules – a wage claim that is on appeal from the Department of Industrial Relations. If the debtor had other employees, it no longer has any, according to its Schedule G, and has paid no employees $6,425 or more in the 90 days prior to the filing.

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1 See http://www.thecarecenters.com/show/Sunshine-Indeed-Julian-Inc-Stockton-CA (last visited Nov. 22, 2016). "The staff at Sunshine Indeed Julian, Inc. provide personalized services designed to meet the needs of every patient. The dedicated health professionals offer the assistance you need while respecting your independence." Id.

2 The specific question is "Does the debtor own or lease any real property?" The debtor answered "No." Debtor's schedules and statement of affairs, DN 19, p. 11 of 44.

35. 14-29061-D-7 DBJ-2 — MARK LIGHT — MOTION TO AVOID LIEN OF SUSQUEHANNA COMMERCIAL FINANCE, INC. 10-28-16 [20]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Susquehanna Commercial Finance, Inc. ("Susquehanna"). The motion will be denied because the moving party has failed to serve Susquehanna in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Susquehanna (1) by certified mail to the attorney who obtained Susquehanna's abstract of judgment; and (2) by certified mail to Susquehanna's agent for service of process. The first method was insufficient because (a) there is no evidence the attorney is authorized to receive service of process on behalf of Susquehanna in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b) (see In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004)); and (b) service on a corporation that is not an FDIC-insured institution, such as Susquehanna, must be by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to 7004(b) with 7004(h). The second method was insufficient because (a) service on Susquehanna, which is not an FDIC-insured institution, must be by first-class mail; and (b) the moving party failed to address service to Susquehanna in care of its agent for service of process. In other words, service was addressed only to CT Corporation System; service was not addressed to Susquehanna at all.

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

36. 14-29061-D-7 DBJ-3 — MARK LIGHT — MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC 10-28-16 [25]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Ford Motor Credit Company LLC ("Ford"). The motion will be denied because the moving party has failed to serve Ford in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Ford (1) by certified mail to the attorney who obtained Ford's abstract of judgment; and (2) by certified mail to Ford's agent for service of process. The first method was insufficient because (a) there is no evidence the attorney is authorized to receive service of process on behalf of Ford in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b) (see In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004)); and (b) service on a corporation that is not an FDIC-insured institution, such as Ford, must be by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to 7004(b) with 7004(h). The second method was insufficient because (a) service on Ford, which is not an FDIC-insured institution, must be by first-class mail; and (b) the moving party failed to address service to Ford in care of its agent for service of process. In other words, service was addressed only to CT Corporation System; service was not addressed to Ford at all.

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

37. 14-25369-D-7 REBECA FORTEZA
DNL-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH, AND CUNNINGHAM TRUSTEES ATTORNEY(S)
11-2-16 [32]

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.

38. 16-25286-D-7 CONSTANCE ELDER
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-24-16 [13]

Final ruling:

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

39. 16-23505-D-7 DIANE BURNS
BHS-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DIANE MICHAEL BURNS
11-7-16 [38]

Tentative ruling:

This is the trustee's motion for approval of his compromise with the debtor concerning certain of the debtor's claims of exemption. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has a preliminary concern.

The trustee's entire analysis of the Woodson factors (In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988)) is this: "the estate will likely be better off financially by accepting the compromise given the risks of litigation and the likelihood of significant funds from the potential wrongful termination lawsuit against [the debtor's] former employer. There are costs and substantial risks that would be avoided by this compromise in challenging the exemptions [claimed] by the Debtor . . . ." Trustee's Motion, DN 38, at 3:23-27. This analysis is simply too general; in fact, it likely could be used in most any motion to approve any compromise of any claim. That is not sufficient.

"It is clear that there must be more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement. The court must also find that the compromise is fair and equitable." In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The trustee has the burden of "persuading the bankruptcy court" the compromise is fair and equitable. Id.

> There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Id. at 1382, quoting Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968). "Placing the burden on the trustee makes sense and is not onerous; after all, the trustee must first inform himself of all the relevant facts before he can make a decision exercising proper business judgment." In re Coonrod, 2010 Bankr. LEXIS 4717, *17-18 (Bankr. D. Idaho 2010).

In this case, the trustee has done nothing more than recite the applicable factors and make the general statements set forth above. Although he refers to the "likelihood of significant funds" in the underlying litigation, he does not state whether significant funds are likely or unlikely. Further, he has not explained any of the considerations he applied concerning the debtor's claims of exemption, and in particularly, her claim of exemption under Cal. Code Civ. Proc. § 703.140(b)(11)(E), which provides for the exemption of a payment in loss of future earnings to the extent reasonably necessary for the support of the debtor or a dependent. The trustee has not explained the nature of the damages sought by the debtor in the underlying litigation, the extent to which those damages include lost earnings, and so on, or provided any insight into the extent to which litigation proceeds are likely to be necessary for the debtor's support and that of her dependents, if any. In short, the trustee has given creditors and the court insufficient information from which to assess the compromise in light of the relevant factors.

> [T]he trustee is required to appropriately weigh and evaluate all the factors relevant to the exercise of his business judgment. He is then required to explain those factors and how they were evaluated, so that the Court can perform its duty of independent review to find the settlement fair and equitable, and confirm that the trustee's decision rests within the range of his discretion. Trustees cannot meet these burdens and standards by simply saying "trust me" even if simultaneously iterating the A & C Props. factors.

In re Apply 2 Save, Inc., 2011 Bankr. LEXIS 1374, *11-12 (Bankr. D. Idaho 2011) (citations omitted). Here, the trustee has not satisfied his burden.

The court will hear the matter.

40. 16-25239-D-7 DIVINDER HUNDAL — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
CDH-2 — 11-16-16 [50]

41. 16-24067-D-7 BUTTACAVOLI INDUSTRIES, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
BN-2 — 11-15-16 [19]
RABOBANK, N.A. VS.

42. 16-26873-D-11 DEF ENTERPRISES, INC. — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
10-17-16 [1]

Tentative ruling:

This is the initial status conference in this chapter 11 case. Although the court does not ordinarily issue tentative rulings for status conferences, in this case, the court has significant concerns. First, the Order to (1) File Status Report; and (2) Attend Status Conference ("Order") required the debtor to serve the Order on, among others, the holders of the 20 largest unsecured claims, whereas the debtor failed to serve the only creditor on the list of the 20 largest unsecured creditors, the Franchise Tax Board. The debtor also did not serve its Status Report on the Franchise Tax Board, although it did serve the Internal Revenue Service, which is not scheduled as a creditor at all.

Second, the debtor's counsel, David Foyil, is also its president, sole shareholder, sole tenant, and sole source of revenue. As such, he is, by definition, not a disinterested person (see § 101(14) of the Bankruptcy Code), as required by § 327(a). Further, Mr. Foyil's position in all of these capacities, if not in any one of them, almost by definition renders him a person who holds an interest adverse to the estate.[1] Mr. Foyil's intention, according to his Rule 2016(b) statement, to render services to the debtor pro bono does not exempt him from the requirements of disinterestedness and absence of an adverse interest. Although denial of compensation "puts teeth into the requirement of disinterestedness" (3 COLLIER ON BANKRUPTCY ¶ 327.04[4] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.)), the standards go to the heart of the professional's status as a fiduciary to the estate, with a duty "to represent the estate and act only in

its best interest, not the interest of the debtor." Shat v. Kistler (In re Shat), 2009 Bankr. LEXIS 4547, *14 (9th Cir. BAP 2009).[2]

Third, the debtor has altered the form of the Statement of Financial Affairs such that pertinent information may have been omitted; in addition, the debtor has failed to disclose other required information. The form of the Statement of Financial Affairs, Official Form 207, question 1, includes a chart on which the debtor is required to disclose its gross business revenue from the beginning of the fiscal year to the filing date, for the prior year, and for the year before that. The chart also includes the dates for the periods covered and a check-the-box chart for listing the income sources. The debtor in this case answered the question "Gross revenue from business" by checking the box for "None." However, the debtor whited out or otherwise deleted the entire chart that is part of the official form. Thus, the debtor's president who signed the statement of affairs (Mr. Foyil) arguably has not sworn under penalty of perjury that the debtor has had no revenues in each of the past three years, as required by the official form. For virtually all the rest of the questions in the statement of affairs, the debtor also answered "None" and deleted the charts in the official form. A debtor is not at liberty to delete whole sections of the official forms.

In addition, it appears the debtor's "None" answers to several of the questions in the statement of affairs are wrong or misleading. The debtor's Schedule G discloses a monthly rental agreement under which the debtor's tenant, Mr. Foyil, pays an amount equal to the debtor's mortgage payment plus taxes, insurance, and maintenance. The debtor does not say Mr. Foyil pays those amounts directly and individually to the mortgage holder, the tax collector, the insurance company, and persons providing maintenance services. Instead, it says he pays "an amount equal to" the total of those items, which implies he pays that amount to the debtor. Yet the debtor's Schedule B shows it has no bank account (in fact, no assets of any kind other than the real property), and as indicated, in the statement of affairs (as altered), the debtor stated it has had no revenue.

The debtor also answered "None" where required to list payments to any creditor within the 90 days prior to the case filing. It may be that the debtor made no mortgage, tax, insurance, or other payments during that period, but if it did, or if Mr. Foyil made such payments on the debtor's behalf, the debtor was required to list those payments. If instead Mr. Foyil has not been making those payments, that fact should have been disclosed somewhere in the statement of affairs, either in answer to question 9 (gifts) or question 30 ("value in any form" provided by the debtor to an insider), yet the debtor answered those questions "None" and "No." If Mr. Foyil has not made those payments but is liable to the debtor for them, it appears he is, in addition to the other hats he wears, a creditor of the debtor (albeit not scheduled as such), which renders him per se ineligible to be its attorney.[3]

Next, if the debtor's statement of affairs is accurate, the debtor maintains no books or records. (Where required to list all firms or individuals in possession of the debtor's books and records at the time of filing, the debtor answered "None.") This is troubling for a corporate debtor going into a chapter 11. Finally, where required to list its officers, directors, and other controlling persons, the debtor left the answer space blank. That is, the debtor did not answer "None" and did not provide any names. Although it appears Mr. Foyil is the only person occupying any of those positions, an answer was required.

Mr. Foyil is an experienced bankruptcy attorney who should be more than capable

of preparing complete and accurate schedules and statements. Yet those he prepared in this case raise many significant concerns, not the least of which is his status as the debtor's tenant and sole source of income in a situation where, according to the corporate resolution authorizing the bankruptcy filing, the debtor is unable to make the balloon payment due on the note secured by its real property (Mr. Foyil's business premises) and the debtor has no other assets. For all of these reasons, the court intends to consider at the status conference, as permitted by the Order, dismissal or conversion of the case or appointment of a chapter 11 trustee.

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1 A generally accepted definition of "adverse interest" is the (1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate.

Dye v. Brown (In re AFI Holding, Inc.) (AFI Holding I), 355 B.R. 139, 148-49 (9th Cir. BAP 2006).

3 "[C]ounsel for a corporate Chapter 11 debtor in possession owes a fiduciary duty to the corporate entity estate – the client – and represents its interests, not those of the entity's principals." In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 840 (Bankr. C.D. Cal. 1991). In this instance, the debtor's attorney is the debtor's principal. A more striking instance of absence of disinterestedness and an interest adverse to the estate is hard to imagine.

3 "It is black-letter law that a 'creditor' is not 'disinterested.'" In re Kobra Props., 406 B.R. 396, 403 (Bankr. E.D. Cal. 2009).

43.	16-24098-D-7 BN-1 RABOBANK, N.A. VS.	BRUCE BUTTACAVOLI	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-15-16 [16]