UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 13, 2019 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.	15-29103-D-7 DNL-7	ROCK RIDGE PROPERTIES, INC.	MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR TRANZON ASSET STRATEGIES, AUCTIONEER(S) 2-12-19 [86]

2.	18-23405-D-7 BHS-3	FRANK/ALICIA RUZ	MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEE'S ATTORNEY 2-8-19 [30]

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 by minute order. No appearance is necessary.

3. 18-27810-D-7 JUAN OSUNA
NLL-1
FREEDOM MORTGAGE CORPORATION
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-31-19 [13]

Final ruling:

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

4. 12-23742-D-7 BECKY FATUR
HLG-1

AMENDED MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
2-11-19 [43]

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, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

5. 12-23742-D-7 BECKY FATUR
HLG-2

AMENDED MOTION TO AVOID LIEN OF SHERIFF'S ALARM BUREAU
2-11-19 [46]

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, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

6. 17-28245-D-7 NEW MEDIA CENTERS
DNL-4

MOTION FOR ADMINISTRATIVE EXPENSES
2-12-19 [77]

Tentative ruling:

This is the trustee's motion for allowance of and authority to pay administrative income tax claims. The notice of hearing does not advise potential respondents whether written opposition need be filed or otherwise indicate how to oppose the motion. Thus, the court will entertain opposition, if any, at the hearing.

The court will hear the matter.

7. 17-28245-D-7 DNL-5 — NEW MEDIA CENTERS — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY(S)
2-12-19 [81]

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.

8. 18-22453-D-7 MDM-1 — ECS REFINING, INC. — MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, OTHER PROFESSIONAL
2-8-19 [1004]

Final ruling:

The hearing on this motion has been continued to March 27, 2019 at 10:00 a.m.

9. 18-22453-D-7 MDM-1 — ECS REFINING, INC. — MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE
2-6-19 [988]

Final ruling:

This motion, filed February 6, 2019 at DN 988, is denied as having been superseded by the duplicate motion filed February 8, 2019 at DN 1004.

10. 18-22453-D-7 PEQ-2 — ECS REFINING, INC. — MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN AND HORN, ACCOUNTANT(S)
2-8-19 [1009]

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 by minute order. No appearance is necessary.

11. 18-22453-D-7 ECS REFINING, INC.
WFH-11

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY, HOFFELT, GOULD AND BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEE'S ATTORNEY(S)
2-8-19 [992]

Final ruling:

The hearing on this motion has been continued to March 27, 2019 at 10:00 a.m.

12. 18-22453-D-7 ECS REFINING, INC.
WFH-14

MOTION FOR COMPENSATION FOR CAPITOL DIGITAL DOCUMENT SOLLUTIONS, LLC, OTHER PROFESSIONAL(S)
2-8-19 [998]

13. 18-27954-D-7 WILLIAM/JOANN WEAVER
BPR-1
UNIFY FINANCIAL FEDERAL CREDIT UNION VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-12-19 [21]

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 debtors' Statement of Intentions indicates they 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.

14. 15-26258-D-7 KELLY VENT
18-2046 RJM-3
VENT V. DISCOVER BANK

MOTION FOR ENTRY OF DEFAULT JUDGMENT
2-8-19 [32]

15. 18-27462-D-7 GONZALO/DENISE TABIOS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 2-4-19 [13]
FORD MOTOR CREDIT COMPANY, LLC VS.

Final ruling:

This matter is resolved without oral argument. This is Ford Motor Credit Company, LLC'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 debtors are 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.

16. 18-26464-D-7 TERRY HERTZ — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
DMW-1 — 2-6-19 [24]

Final ruling:

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

17. 18-22878-D-7 DENNIS/SANDRA HARRISON — MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY
GSJ-1 — 1-30-19 [47]

Tentative ruling:

This is the debtors' motion to avoid a purported judicial lien held by Ford Motor Credit Company, LLC ("Ford") against the debtors' mobile home. The motion will be denied because the moving parties have failed to submit evidence establishing their factual allegations and demonstrating they are entitled to the relief requested, as required by LBR 9014-1(d)(3)(D). Specifically, they have not shown that Ford has a judicial lien against the mobile home.

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)" (In re Mohring, 142 B.R. 389, 391 (Bankr. E.D. Cal. 1992)), including that the creditor has a lien that is a judicial lien. Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting Mohring, 142 B.R. at 392. The debtors state they are seeking to avoid Ford's judicial lien "against their personal property"; namely, a mobile home. However, they have submitted no admissible evidence that Ford has a judicial lien against the mobile home.

The motion lists the name of the lawsuit, the alleged date of entry of the judgment, the alleged date of issuance of an abstract of judgment, and the alleged

amount of the lien. The only evidence of the alleged lien is the joint debtor's declaration that at the time the petition was filed, Ford "had a lien on the property in the amount of $28,023.46" and the lien "impairs [her] exemption." This is hearsay and inadmissible as a legal conclusion. The debtors have not submitted a copy of the abstract of judgment, let alone a copy of the abstract as recorded. "The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of a recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

Even if an abstract of judgment was recorded in the county where the mobile home is located, the moving parties have provided no authority for the proposition that the recordation of an abstract of judgment results in a judgment lien attaching to personal property such as a mobile home.[1] A moving party has the responsibility to state with particularity the factual and legal grounds for the relief requested, including citation to the authority that forms the basis of the request. LBR 9014-1(d)(3)(A).

The court will hear the matter.

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1 The recording of an abstract of judgment creates a lien that attaches to real property interests. Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a).

18.	18-27383-D-7 MB-1	PAUL RAMIREZ	MOTION TO AVOID LIEN OF SEQUOIA CONCEPTS, INC. 1-29-19 [13]

19.	17-20689-D-7 APN-2 TOYOTA MOTOR CREDIT CORPORATION VS.	MONUMENT SECURITY, INC.	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-8-19 [539]

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtors are 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.

20. 17-20689-D-7 DNL-13 — MONUMENT SECURITY, INC. — MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES 2-5-19 [534]

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 to employ West Auctions, Inc. As auctioneer, authorizing sale of property at public auction and authorizing payment of auctioneer fees and expenses 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.

21. 17-20689-D-7 DNL-14 — MONUMENT SECURITY, INC. — MOTION TO PAY 2-13-19 [545]

22. 15-29890-D-7 DNL-55 — GRAIL SEMICONDUCTOR — AMENDED MOTION FOR ADMINISTRATIVE EXPENSES 2-26-19 [1228]

Tentative ruling:

This is the trustee's amended motion for allowance of and authority to pay an administrative tax claim of the Franchise Tax Board in the amount of $$270,893.78. Steve Fredman has filed opposition. For the following reasons, the motion will be granted.

Mr. Fredman states, "I'm out $10,000, and it would cost that much or more if I do what Lawyers Cunningham et al tell me I must do— hire an expensive lawyer and show up in court – "you and your attorney must appear." He complains the requirement that he "hire an expensive lawyer and make a personal appearance de facto deprives [him] of due process." That is not the case. The language in the trustee's notice of hearing cites a requirement that "you or your attorney" must file written opposition and appear at the hearing. There is no suggestion one opposing the motion must hire an attorney. The notice of hearing was appropriate under the court's local rules and the court's website provides information as to how parties may appear at hearings by telephone.

Mr. Fredman also complains the trustee is ignoring the "little guys" and the process is not fair. As has been explained before, in rulings on earlier motions, the court is sympathetic to Mr. Fredman's plight as a creditor, but he has shown no basis in law or fact for denying this motion. The court concludes the FTB has an administrative tax claim in the amount of $270,893.78 that should be allowed and paid. Accordingly, the motion will be granted.

The court will hear the matter.

23. 15-29890-D-7 GRAIL SEMICONDUCTOR — MOTION FOR ADMINISTRATIVE EXPENSES
SLC-5 — 2-13-19 [1214]

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 to pay administrative expense of the Franchise Tax Board of $800 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.

24. 15-29890-D-7 GRAIL SEMICONDUCTOR — MOTION TO DISMISS AMENDED COURTERCLAIM
18-2180 — 1-31-19 [27]
SEDGWICK FUNDINGCO, LLC V. NEWDELMAN ET AL

Tentative ruling:

This is the motion of counterdefendant Sedgwick FundingCo, LLC ("Sedgwick") to dismiss the counterclaim of three individuals referred to by the parties as the NewDelman Group (collectively, "NewDelman"). NewDelman has filed a response in the nature of an opposition and Sedgwick has filed a reply. For the following reasons, the motion will be granted in part and denied in part.

This adversary proceeding concerns a Priority Agreement among the debtor in the parent chapter 7 case and certain of its creditors, including Sedgwick, NewDelman, and Ronald Hofer, who is also a defendant in the adversary proceeding, regarding the order of distribution of the proceeds of the debtor's litigation against Mitsubishi Electric and Electronics USA, Inc. ("Mitsubishi").[1] Sedgwick filed the complaint commencing this adversary proceeding, seeking a determination that its claim against the bankruptcy estate has priority over NewDelman's claim and the claim of Ronald Hofer. NewDelman responded with an amended answer and counterclaim that includes nine affirmative claims against Sedgwick.

Sedgwick contends, first, that NewDelman lacks standing because its claims are derivative of the estate's claims – claims that were released by the trustee in her recent settlement with Sedgwick. As to one of NewDelman's claims, Claim VIII – a claim to "reverse" an alleged fraudulent transfer to Sedgwick, the court agrees with Sedgwick.

The power to avoid a fraudulent transfer may be exercised by a trustee (§ 548 of the Code) or a chapter 11 debtor-in-possession (§ 1107(a)) or by someone else if the trustee or debtor-in-possession transfers his or her avoidance powers, or some of them, through a plan of reorganization or outside of a plan "when a creditor is pursuing interests common to all creditors." Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d 774, 780-81 (9th Cir. 1999). Here, the trustee did not transfer any of her avoiding powers to NewDelman, including the power to seek to avoid the pre-petition payment to Sedgwick as a fraudulent transfer. That power at all times remained with the trustee until, as a part of her compromise with Sedgwick, she released all of the estate's claims against Sedgwick. The claim NewDelman now attempts to assert is derivative of a claim that belonged to the estate, which the trustee has now relinquished. Accordingly, as to Claim VIII, the motion will be granted.

As to the remaining claims, however, the court does not agree they are derivative of the estate's claims. Sedgwick contends "[NewDelman] is not the proper

party to challenge or seek recovery based upon [Sedgwick's] alleged misconduct, as any such claims necessarily belong to the Estate for the benefit of all creditors." Sedgwick's Memo., filed Jan. 31, 2019 ("Memo."), at 12:17-18. The contention is nothing but a conclusion. Sedgwick offers no analysis as to why claims of alleged misconduct on Sedgwick's part "necessarily" belonged to the debtor, and hence, to the estate once the bankruptcy case was filed. There were nine parties to the Priority Agreement; each of them had and/or has rights against the others arising out of the agreement. Sedgwick's position that any and all claims of the other parties to the agreement necessarily belonged to the debtor makes no more sense when applied to NewDelman's claims against other parties than to the claims of, for example, Ronald Hofer, or Sedgwick itself.[2]

In the cases cited by Sedgwick, it was clear the claims the plaintiff sought to assert were claims belonging to the debtor, to which the estate succeeded. In Estate of Spirtos v. One San Bernardino County Superior Court Case Numbered SPR 02211, 443 F.3d 1172 (9th Cir. 2006), for example, "[t]he substance of plaintiff's claims [was] that the defendants "have jointly conspired to conceal assets belonging to the bankruptcy and probate estates of [the debtor and decedent] for the purpose of obstructing the payment of the Decedent's creditors and legal heirs . . . ." Id. at 1174. The court held that as a creditor, the plaintiff did not have standing to assert claims belonging to the estate, and those claims could be asserted exclusively by the trustee. Id. at 1175. Similarly, in CAMOFI Master LDC v. Associated Third Party Adm'rs, 2018 U.S. Dist. LEXIS 23657, 2018 WL 839134 (N.D. Cal. 2018), also cited by Sedgwick, the creditor/plaintiffs alleged insiders of the debtor had "breached their fiduciary duty to preserve the corporation's assets for the benefit of creditors, but that they instead 'wrongfully dissipat[ed]' the assets by 'funneling assets to themselves,'" and that the transfers of assets were fraudulent transfers. 2018 U.S. Dist. LEXIS 23657, at *7. Thus, the court held, the actions were derivative and could be pursued only by the trustee. Id. at *13-15, 19-22.

That is not the case here. Except for the fraudulent transfer claim, NewDelman is not pursuing claims that could have been pursued by the debtor, and hence, by the trustee. In fact, the debtor was a party to the Priority Agreement, apparently (although the court is not deciding) in last position – to be paid after all the other parties had been paid in full. NewDelman is not asserting claims the debtor could have made; in fact, it asserts the debtor was wrongfully paid ahead of NewDelman, to New Delman's detriment. Nor is NewDelman asserting claims the trustee could have asserted on behalf of the creditors as a whole. It is asserting claims peculiar to NewDelman; that is, its own direct claims.

Sedgwick was the second of three parties to the Priority Agreement – Hofer, Sedgwick, and NewDelman – to settle with the trustee. It had evidently become apparent by the time of the Sedgwick compromise that none of the parties to the Priority Agreement had taken any action to determine rights under it, and the trustee and Sedgwick included in their settlement agreement a deadline by which Sedgwick would be required to file an adversary complaint. In terms of standing to pursue rights under the Priority Agreement, the trustee might just as well have waited and insisted on a deadline for NewDelman to bring its claims when she settled with NewDelman. The fact that it was Sedgwick that filed the complaint rather than NewDelman has no effect on the parties' respective direct claims against each other. At the hearings on the trustee/Sedgwick compromise, the court went to great lengths to express its view that it could not approve a settlement that would affect, determine, compromise, or limit the rights of third parties who were not parties to the trustee/Sedgwick settlement agreement. And in its ruling, as to the parties to

the Priority Agreement, the court "conclude[d] their rights to litigate the validity and effect of the Priority Agreements are not affected by the compromise . . . ." Civil Minutes, filed Oct. 17, 2018, DC No. DNL-42, p. 10.

Sedgwick also argues, as a part of its standing theory, that NewDelman can claim no damages because if it had received what it claims it was entitled to under the Priority Agreement, the payment of those funds would have been a preference avoidable by the trustee. The issue, theoretically, is one of damages and, at this stage, is speculative at best. Preference litigation is often long and arduous; to raise the argument at the pleading stage is to ask the court to assume much more than is appropriate.

Sedgwick next contends, pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b), that each of NewDelman's claims fails to state a claim upon which relief can be granted. With respect to Claim III – for tortious interference with a contractual relationship, the court agrees. "[T]he tort cause of action for interference with contract does not lie against a party to the contract." Applied Equipment Corp. v. Litton Saudi Arabia Ltd., 7 Cal. 4th 503, 514 (1994); see also Redfearn v. Trader Joe's Co., 20 Cal. App. 5th 989, 997 (2018). Because Sedgwick was a party to the Priority Agreement, it cannot be held liable to NewDelman in tort for interference with that contract. Accordingly, as to Claim III, the motion will be granted.

As to the rest of NewDelman's claims, however, accepting the allegations of the counterclaim as true and drawing all reasonable inferences in favor of NewDelman, the court concludes they contain sufficient factual matter to state claims to relief that are plausible on their face, as required. See al-Kidd v. Ashcroft, 580 F.3d 949, 949 (9th Cir. 2009), citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The factual allegations in the claims themselves are not extensive, but each incorporates the allegations in the preceding paragraphs, which include a significant number of sufficiently detailed allegations. These are sufficient to give Sedgwick notice of the particular misconduct it is charged with so it can defend itself and not just deny it has done anything wrong. See Johnson v. JP Morgan Chase Bank, 395 B.R. 442, 446-47 (E.D. Cal. 2008), quoting Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001).

Finally, Sedgwick contends that all of NewDelman's claims except its breach of contract claim are barred by the statute of limitations. Sedgwick's conduct complained of by NewDelman occurred in or around October of 2015; NewDelman's counterclaim was filed in December of 2018. Sedgwick's position is that California law applies and that each of NewDelman's claims except the breach of contract claim is barred by a two- or three-year statute of limitations under California law. NewDelman responds that the applicable statute is the longer one afforded by Illinois law. Both parties rely on PNC Bank v. Sterba (In re Sterba), 852 F.3d 1175 (9th Cir. 2017) – Sedgwick for the proposition that "'[t]he forum [jurisdiction] will apply its own statute of limitations' barring 'exceptional circumstances'" (Memo., at 22:24-25, quoting Sterba, at 1179) and NewDelman for the proposition that exceptional circumstances exist here. Based on the analysis in Sterba and that court's finding of exceptional circumstances in the case before it, the court agrees with NewDelman and holds the applicable statute of limitations on NewDelman's claims is Illinois' five-year statute.

The Sterba court began by noting the Ninth Circuit has "directly adopted" Restatement (Second) of Conflict of Laws § 142, the section setting forth Sedgwick's

position, as quoted above. Sterba, 852 F.3d at 1179. The court then discussed the policies underlying the rule.

> The Second Restatement's preference for the forum state's statute of limitations, in cases where it has the shorter limitations period, is based on the policy that "[a] state has a substantial interest in preventing the prosecution in its courts of claims which it deems to be 'stale.'" § 142, cmt. f (1988). In the ordinary case, that interest is treated as controlling because vindicating it imposes no real prejudice on the time-barred party—dismissal of a claim as barred by the statute of limitations generally "does not constitute a judgment on the merits," and following such a dismissal "the plaintiff will usually remain free to sue" in a state with a more generous limitations period. Id. But where a countervailing interest exists such that "under the special circumstances of the case dismissal . . . would be unjust," the forum (here, California) will apply another state's longer statute of limitations. Id.

Sterba, at 1179 (footnote omitted).

Based on that analysis, the Sterba court found exceptional circumstances and held that the longer statute of limitations under Ohio law, which was the law selected by the parties in the choice of law provision in their contract, would govern over California's shorter statute because the plaintiff - the holder of a promissory note from a debtor who had filed bankruptcy in California, had no choice but to file its proof of claim in the California bankruptcy court. Sterba, 852 F.3d at 1180.

> Here, the unique strictures of the bankruptcy code mean that, through no fault of PNC's, there is no forum for its claim other than the Northern District of California. This is not a case filed voluntarily in California, in which a dismissal on statute of limitations grounds would be without prejudice to bringing the same claim in Ohio. Rather, once the Sterbas declared bankruptcy, PNC was obligated to bring all its claims in the district where the Sterbas filed. Under these circumstances, to reject PNC's claim as time-barred would be the functional equivalent of a dismissal on the merits. Where another jurisdiction—National City's home state of Ohio—would hear the claim, and has a substantial interest in its resolution, disallowing it by mechanical adoption of California's statute of limitations would be wholly unreasonable.

Id. (footnote omitted).

Sedgwick, latching on to the language in Sterba that "through no fault of PNC's, there is no forum for its claim other than the Northern District of California," attempts to find fault on NewDelman's part. Thus, Sedgwick assigns blame to NewDelman for not bringing its claims under the Priority Agreement earlier. In Sedgwick's view, "the delay in bringing these claims is precisely - and solely - the fault of [NewDelman]. Indeed, if [NewDelman] had possessed independent, non-derivative claims against Sedgwick, it would have been free to bring such claims at any time." Sedgwick's Reply, filed March 6, 2019 ("Reply"), at 16:4-6. The point in Sterba, however, was not whether the party bringing the claim was to blame for delaying beyond the shortest of two possible statutes of limitations. The point was whether, through no fault of the plaintiff, there was but one forum in which to

bring the claim.

NewDelman is not to blame for bringing its claims in this court rather than in Illinois.[3] It is likely NewDelman's claims were compulsory counterclaims to the claims Sedgwick makes in its adversary complaint; thus, NewDelman was required to bring them here. In fact, given the five-year statute of limitations NewDelman asserts as governing its claims, in the absence of Sedgwick's adversary complaint, NewDelman would likely be able to commence its own litigation in Illinois, even at this point in time. The point here is that Sedgwick agreed in its compromise with the trustee to file an adversary complaint here to determine the rights of the parties to the Priority Agreement other than the debtor and the estate. In filing its counterclaim, NewDelman was merely exercising its right, and probably its obligation, to have its own claims against Sedgwick under that agreement determined in the same court.

Finally, Sedgwick denies that Illinois law governs, contending there was no choice of law provision in the Priority Agreement. The Priority Agreement, however, refers to and "incorporates by reference herein" a fee agreement dated April 12, 2012 between the debtor and its then attorneys in the Mitsubishi litigation, an agreement which itself had an Illinois choice of law clause. Sedgwick states in a footnote, "this language [in the Priority Agreement] does not and cannot bind the Priority Agreement's other nine parties as parties to the terms of that separate agreement between the Debtor and its counsel." Reply at 16:27-28. With no analysis or authority offered by Sedgwick, and the court aware of none, the court has no basis on which to agree.

For the reasons stated, the motion will be granted in part and NewDelman's Claims III and VIII will be dismissed. As to NewDelman's other claims, the motion will be denied. The court will hear the matter.

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1 NewDelman claims there were different versions of the Priority Agreement and there is a dispute as to which was the actual contract. The court need not determine either issue here, and will use the term "Priority Agreement" in the singular for the sake of convenience.

2 Hofer's and NewDelman's claims against Sedgwick under the Priority Agreement differ in that Hofer expressly assigned all of his claims against Sedgwick to the estate in his compromise with the trustee (see Order Granting Motion to Approve Settlement with Ronald Hofer, filed April 12, 2018 in Case No. 15-29890, Ex. A, ¶ 4), whereas NewDelman did not. In fact, NewDelman's settlement with the trustee stated, "this Settlement Agreement shall not preclude any individual claim, defense or right to[sic] which [NewDelman] may have against [Sedgwick] and/or other non-debtors." Order Granting Motion to Approve Settlement with the NewDelman Group, filed Jan. 15, 2019 in Case No. 15-29890, Ex. A, ¶ 5.

3 In fact, in January of 2016, just after the debtor commenced this bankruptcy case, NewDelman filed an action under the Priority Agreement in Illinois state court against the debtor's counsel in the Mitsubishi litigation, the Niro law firm. The Illinois court, on the Niro firm's request, placed the case on its "automatic bankruptcy stay calendar." Sedgwick's Ex. 10. That decision by the court would not likely have encouraged NewDelman to bring its claims against other parties to the Priority Agreement, including Sedgwick, in Illinois state court.

25. 18-27691-D-7 CAITLIN SASSMAN
VVF-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
1-23-19 [13]

26. 18-27991-D-7 MARK/TIFFANY AUSTIN
NF-1

MOTION TO COMPEL ABANDONMENT
1-29-19 [12]

Final ruling:

This is the debtors' motion to compel the trustee to abandon the estate's interest in certain real property. The moving parties served the chapter 7 trustee and the United States Trustee, but failed to serve the creditors in the case. Thus, the moving parties failed to serve the motion in accordance with Fed. R. Bankr. P. 6007.

Fed. R. Bankr. P. 6007(a) requires the trustee or debtor in possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors . . . ." On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, although the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a) of the rule. See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)).

The court will continue the hearing to April 10, 2019 at 10:00 a.m., the moving parties to file a notice of continued hearing and serve it, together with the motion, on all creditors in this case, including those listed on the debtors' Schedules E/F, G, and H, and those filing claims in this case at the addresses on their proofs of claim. The notice of continued hearing may be a notice pursuant to LBR 9014-1(f)(1) or (f)(2) so long as the proper amount of notice is given. No appearance is necessary on March 13, 2019.

27. 18-27792-D-7 JOSEPH/JANICE PIERCE
APN-1
SYSTEMS AND SERVICES TECHNOLOGIES, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-19 [18]

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 debtors' Statement of Intentions indicates they 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.

28.	18-25693-D-7 EMM-1 NEW AMERICA FUNDING VS.	ERIC DAVIS	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 10-2-18 [11]
29.	18-27894-D-12 JPJ-1	JEFFREY DYER AND JAN WING-DYER	MOTION TO DISMISS CASE 1-25-19 [28]
30.	18-27920-D-7 MHK-4	GREEN BELT CARRIERS	MOTION TO SELL FREE AND CLEAR OF LIENS 2-20-19 [30]
31.	18-27920-D-7 MHK-5	GREEN BELT CARRIERS	MOTION TO ABANDON 2-20-19 [39]

32. 18-22453-D-7 ECS REFINING, INC. CONTINUED MOTION TO ABANDON
HSM-2 12-26-18 [912]

33. 19-20954-D-7 DRUCILLA LOVETT MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
MWM-330 2-25-19 [12]

34. 19-20673-D-7 KASSANDRA MALONE AND TROY FINLEY ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-19-19 [14]

Final ruling:

This case was dismissed on February 25, 2019. As a result the order to show cause will be removed from calendar as moot. No appearance is necessary.

35. 19-20689-D-7 KRISTINA FEIL MOTION FOR RELIEF FROM AUTOMATIC STAY
BPC-1 2-22-19 [13]
THE GOLDEN 1 CREDIT UNION
VS.

36.	19-20391-D-7 HCS-2	B & G DELIVERY SYSTEM, INC., A CALIFORNIA	MOTION TO EMPLOY TRANZON ASSET STRATEGIES, LLC AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES O.S.T. 2-28-19 [18]