UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 11, 2018 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

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1. 18-23008-D-7 LAQUETTA ROBERTS — MOTION TO VACATE DISMISSAL OF CASE
6-5-18 [24]

DEBTOR DISMISSED: 05/25/2018

2. 17-28024-D-7 ENRIQUE TORRES — CONTINUED MOTION FOR AN EXTENSION OF TIME TO PAY THE UNPAID FILING FEE AND ADMINISTRATIVE FEE
5-11-18 [20]

3. 16-20635-D-7 LISA GARCIA MOTION TO SELL
ADJ-2 6-12-18 [62]

4. 18-23455-D-7 NICHOLAS/TRISHA RUSHING MOTION TO AVOID LIEN OF CENTRAL STATE CREDIT UNION
KWS-1 6-5-18 [8]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Central State Credit Union (the "Credit Union"). The motion will be denied because the moving parties failed to serve the Credit Union in strict compliance with Fed. R. Bankr. P. 7004(b), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Credit Union (1) through the attorney who obtained its abstract of judgment; and (2) by certified mail to the attention of a named CEO/Manager. The first method was insufficient because the moving parties failed to serve the Credit Union to the attention of an officer, managing or general agent, or agent for service of process, as required by Rule 7004(b)(3). There is no evidence the attorney is authorized to accept service of process on behalf of the Credit Union in bankruptcy contested matters. See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because service on a corporation, such as the Credit Union, that is not an FDIC-insured institution, must be by first-class mail, not certified mail. Compare Rule 7004(b)(3) and preamble to Rule 7004(b) with Rule 7004(h).

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

5. 18-23059-D-7 SANDRA PENNIX MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
5-16-18 [5]

6. 17-26461-D-7 JCK-3 — LAZARUS/CHOO CARMICHAEL — MOTION TO COMPEL ABANDONMENT 5-22-18 [43]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

7. 18-21366-D-7 RDW-1 — JANINE COOPER — SAFEAMERICA CREDIT UNION VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 5-23-18 [17]

Final ruling:

This matter is resolved without oral argument. This is SafeAmerica Credit Union'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.

8. 16-27672-D-7 DNL-20 — DAVID LIND — MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR RE/MAX GOLD, BROKER(S) 6-12-18 [487]

9. 16-27672-D-7 DNL-21 — DAVID LIND — MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR GIL ALBIANI, BROKER(S) 6-12-18 [496]

Tentative ruling:

This is the trustee's motion to sell certain property of the estate. The three creditors holding claims secured by the property have filed a statement in support of the motion. The debtor has filed opposition. The court has reviewed the opposition and finds it insufficient to warrant denying the motion or delaying the sale process.

The debtor complains that the trustee relies on a broker's valuation done over a year ago, which the debtor contends is too long to be reliable. The debtor has attached to his opposition six documents entitled Appraiser One Page Reports, which are, in essence, listings of real properties. The documents are not authenticated and are hearsay. Even if the court were to consider them, there is no expert testimony to support a comparison of the listings and/or sales prices of the properties referred to in the listings to the sales price the trustee has obtained.

The debtor also complains about the trustee's broker, arguing he and the trustee made no effort to clean up the property before marketing it. He complains the trustee chose to spend estate funds instead on "legal procedures regarding the [lot line adjustment] and trying to knock the Debtor's appeal of [the] Davis property sale out of the court." These complaints are unsupported conclusions and opinions of the debtor, and in any event, the court has seen them before in the debtor's oppositions to earlier motions. There is nothing new here that would affect the court's decision on this motion.

Accordingly, the court intends to grant the motion and will entertain overbidding, if any, at the hearing.

10.	16-27672-D-7 GMW-5	DAVID LIND	MOTION FOR COMPENSATION BY THE LAW OFFICE OF GANZER & WILLIAMS FOR G. MICHAEL WILLIAMS, OTHER PROFESSIONAL(S) 6-8-18 [482]

Tentative ruling:

This is the motion of counsel for the former debtor-in-possession in this case ("Counsel") for compensation for services rendered during the period the case was pending under chapter 12 and then chapter 11 of the Bankruptcy Code. In the roughly three months the case was pending under one or the other of those chapters, Counsel did not file an application for approval of its employment. It has not done so to date.

Awards of compensation for services rendered without court approval of employment "should be limited to exceptional circumstances where an applicant can show both a satisfactory explanation for the failure to receive prior judicial approval and that he or she has benefitted the bankrupt estate in some significant manner." In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988). As another bankruptcy judge in this district has observed in this situation, "exceptional means exceptional." In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 231 (Bankr. E.D. Cal. 1988). "Mere negligence is not sufficient . . . ." Id., citing In re Downtown Inv. Club III, 1988 Bankr. LEXIS 925, *10-11 (9th Cir. BAP 1988). The burden of proof is on the applicant; the decision is within the court's discretion. In re B.E.S. Concrete, 93 B.R. at 231.

The moving papers do not mention THC Financial or the first of the two requirements; indeed, they do not mention that Counsel never filed an employment application. As to the second requirement – that the services must have benefitted the estate in a significant way, the motion lists in general terms the categories of services provided and states they were provided for the benefit of the estate. The showing is far from sufficient to satisfy the requirement, under the THC Financial standard. Thus, Counsel has not met its burden of proof and the court intends to deny the motion by minute order. The court will hear the matter.

11. 18-20774-D-11 KSR-4 — S360 RENTALS, LLC — MOTION FOR EXAMINATION OF BRANNA LABINE AND FOR PRODUCTION OF DOCUMENTS 6-12-18 [70]

12. 18-20774-D-11 KSR-5 — S360 RENTALS, LLC — MOTION FOR EXAMINATION OF RAYMOND SAHADEO AND FOR PRODUCTION OF DOCUMENTS 6-12-18 [75]

13. 18-21576-D-7 TGM-1 — DAVID CURRIE AND TOSHIO HILL — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-30-18 [24]
U.S. BANK NATIONAL ASSOCIATION VS.

Final ruling:

This matter is resolved without oral argument. This is U.S. 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 debtors are 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.

14. 18-20177-D-7 DNL-4 — DAVID BENJAMIN — MOTION TO SELL FREE AND CLEAR OF LIENS 6-13-18 [57]

15. 05-39978-D-7 JOANNE RUDULPH — ORDER TO APPEAR FOR EXAMINATION
08-2616 — (SAUNDRA RUDULPH)
SPACONE V. RUDULPH — 6-12-18 [26]

ADVERSARY PROCEEDING CLOSED:
4/3/2009

16. 18-23387-D-11 THE FALLS AT ELK GROVE, — MOTION TO DISMISS CASE
FWP-1 LLC, A CALIFORNIA LIMITED — 6-13-18 [18]

Tentative ruling:

This is the motion of the debtor's major secured creditor, iBorrow, L.P., to dismiss this chapter 11 case. The debtor has filed opposition and iBorrow has filed a reply. For the following reasons, the court intends to grant the motion.

It appears undisputed that the classic (albeit non-exclusive) factors the courts consider in determining whether to dismiss a chapter 11 case (or to convert the case or appoint a chapter 11 trustee) are present in this case. The debtor has a single asset. It has no unsecured creditors and only one secured creditor besides iBorrow that is not an insider (the Sacramento County Tax Collector). The debtor has no cash or other financial assets, no bank accounts, no receivables, no ongoing business, no employees, and no apparent sources of income. The debtor did not take title to its only asset – certain real property in Elk Grove, California – until the morning of the day it filed this case, which, in turn, was the day before iBorrow's scheduled foreclosure sale.

The debtor claims it was formed two years ago (and its predecessor entity was dissolved), but the formal transfer of the real property into the debtor entity was "overlooked" until the day before the bankruptcy filing. However, even assuming such is the case, the debtor's sole purpose was to merely hold the real property, not to manage any business on the property or even to collect rents from the entity that operated the two event centers located on the real property, an entity that was and is also the 100% owner of the debtor. In fact, the debtor has never even utilized or maintained a bank account. From the record it is clear the debtor is nothing more than a holding entity which has never conducted any type of business or business activity.

This conclusion is further supported by the debtor's initial status report. The report stated the debtor's event centers are among 14 event centers at eight locations in several states. "All of the center locations are separate entities, and the operations and management of each center are performed by the 'parent' company, The Falls Event Center, LLC." Debtor's Chapter 11 Preliminary Status Report, filed June 8, 2018, at 3:12-20. The parent rents out the event centers to members of the general public, handling bookings, collections of deposits and rental fees, staffing, the providing of furniture and equipment for booked events, insurance, and maintenance.

Noticeable by its absence, is that the debtor has failed to disclose anywhere the income the parent received from operating the events centers in Elk Grove, along with its expenses, its assets related to those two events centers, and so on. The debtor did not make those disclosures, leaving the court and creditors with no idea what range of income the facilities generate, what expenses they incur, or what assets and liabilities the business, run by the parent company, itself has.

Finally, but importantly, the debtor states in its initial status report it did not expect to have to confirm a plan by way of a cram-down. However, iBorrow's action in this case suggests just the contrary, and the debtor has not suggested any way it can confirm a plan over iBorrow's objection. This alone gives the court serious concern as to whether the debtor has any chance for a successful reorganization.

For the reasons stated, the court finds cause exists for dismissal, conversion, or appointment of a chapter 11 trustee. It appears dismissal is in the best interest of creditors. The only real creditor has weighed in – iBorrow - and requests dismissal. The court will hear from other creditors, particularly the only other non-insider creditor, if any appear at the hearing.

17.	18-23387-D-11 FWP-2 IBORROW, L.P. VS.	THE FALLS AT ELK GROVE, LLC, A CALIFORNIA LIMITED	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-13-18 [24]

18.	18-23188-D-7 SDB-1	DANE BESNEATTE	MOTION TO AVOID LIEN OF RHONDA RAYN 5-31-18 [9]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Rhonda Rayn (the "Creditor"). The motion will be denied because the moving party failed to serve the Creditor in strict compliance with Fed. R. Bankr. P. 7004(b), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Creditor, who is an individual, only through the attorneys who obtained the Creditor's abstract of judgment, whereas an individual must be served by mailing copies to the individual's dwelling house, usual place of abode, or place where the individual regularly conducts a business or profession, not through an attorney. Rule 7004(b)(1). Further, service was made by certified mail, whereas service on an individual must be made by first-class mail. See preamble to Rule 7004(b).

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

19. 15-29890-D-7 GRAIL SEMICONDUCTOR OBJECTION TO CLAIMS
DNL-43 6-6-18 [1027]

Tentative ruling:

This is the trustee's motion to disallow the claims of Donald Stern in this case, pursuant to § 502(d) of the Bankruptcy Code. Stern has filed opposition, the trustee has filed a reply, and Stern has submitted a sur-reply, under cover of a motion for leave to file a sur-reply.[1] For the following reasons, the motion will be granted.

The trustee has a judgment against Stern in the original principal amount of $2,749,981.60, against which the trustee states she has recovered from or frozen funds of Stern and third parties totaling approximately $444,455.19, leaving a balance due of approximately $2,305,526.41, exclusive of interest. Thus, the trustee contends the claims should be disallowed pursuant to § 502(d), which "mandatorily disallows claims of creditors who received avoidable transfers or who owe the estate . . . ." In re Sierra-Cal, 210 B.R. 168, 170 (Bankr. E.D. Cal. 1997). The provision is mandatory – the court "shall disallow" any claim that falls within the statute's purview; that is, any claim of any entity from which property is recoverable by a trustee or that is a transferee of an avoidable transfer, unless such entity or transferee has paid the amount due or turned over the property. § 502(d); see also Sierra-Cal, 210 B.R. at 173. By virtue of her judgment against Stern, the trustee is entitled to recover property from Stern; namely, the sum of $2,305,526, and the court shall disallow Stern's claims unless and until he pays the trustee what he owes.

None of Stern's arguments raises a valid defense to the application of § 502(d) to his claims. Its application (1) does not depend on the parties having negotiated or negotiated in good faith; (2) does not invoke a comparison of the trustee's negotiating efforts as between the claimant whose claims she seeks to disallow and other claimants; (3) does not invoke a consideration of the relative merits of the claims she seeks to have disallowed and those she has settled; (4) does not require that the trustee be ready to make a distribution to creditors; and (5) does not require a finding that the claimant has money or property for the trustee to recover. (Stern claims he has no money or property, so there is no property "recoverable" from him.) The § 502(d) analysis is as simple as the trustee phrases it: "Stern is a judgment debtor liable to the Trustee for over $2.3 million on account of the Stern Judgment. The Stern Judgment is recoverable by the Trustee under 11 U.S.C. §§ 542(a), 547(b), and 550. Thus, pursuant to 11 U.S.C. § 502(d), any allowance of the Stern Claims is barred until the remaining balance of the Stern Judgment has been recovered by the estate." Trustee's Motion, DN 1027, at 2:24-27.[2]

Finally, Stern says he fears that if this motion is granted, "the Trustee could then tell [him] '[she] can't negotiate [his] claims because they have been disallowed.'" Stern's Decl., DN 1035, ¶ 33. "This, [he] believe[s] is the sole purpose of her instant motion." Id. Again, Stern misunderstands § 502(d). It requires disallowance of the claim "unless and until" the property is turned over or the debt is paid. Sierra-Cal, 210 B.R. at 173. Thus, "§ 502(d) operates as a temporary disability. It is temporary in the sense that the disallowance ceases when the creditor disgorges the property in question." Id. Whether the trustee chooses to further negotiate with Stern is a matter for her business judgment; it is sufficient for present purposes to point out that disallowance of a claim under § 502(d) is lifted once the claimant pays what he owes the estate.[3]

For the reasons stated, the court will grant the motion and disallow Stern's claims pursuant to § 502(d). The court will hear the matter.

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1 Because Stern is representing himself and because he claims the trustee raised a "new and inappropriate legal argument in her Reply" (Stern's Motion for Leave of Court to File Sur-Reply, DN 1040, at 1:23), the court will consider the sur-reply.

2 Stern argues repeatedly and strenuously that the trustee negotiated with him in bad faith and through bias and threat. Indeed, he filed a sur-reply solely to refute the trustee's evidentiary objection to his testimony about their negotiations. Stern claims his testimony is admissible, under Fed. R. Evid. 408(b), because he seeks to demonstrate that the trustee negotiated with him in bad faith and through bias and threats. As indicated above, the trustee's negotiations with the claimant are irrelevant in a motion brought under § 502(d). However, charges against a bankruptcy trustee of bad faith, bias, threats, and "holding [a claimant's] family hostage by extortion" (Stern's Decl., DN 1035, at 3:8) bear mention. The court has examined Stern's testimony, taking it as admissible for the purposes Stern asserts, and finds it does not support the conclusion that the trustee acted in bad faith or through bias, threats, or extortion.

3 The motion itself states that the trustee is seeking disallowance of the claims "until Stern pays the remaining balance owed under the Stern Judgment." Trustee's Motion, DN 1027, at 3:1.

20. 18-23396-D-11 METRO PALISADES, LLC — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-14-18 [18]

Final ruling:

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

21. 18-20604-D-11 BOB COOK COMPANY LLC — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
2-2-18 [1]

Final ruling:

This status conference hearing is continued to August 22, 2018 at 11:00 a.m. to be heard with the debtor's scheduled hearing to approve disclosure statement. No appearance is necessary on July 11, 2018.

22.	18-23707-D-7 LBG-1	LANCE ENGELSTAD	MOTION TO EXTEND AUTOMATIC STAY 6-27-18 [15]
23.	18-23150-D-7 VVF-1 AMERICAN HONDA FINANCE CORPORATION VS.	ANGEL ROVERSO AND JENNIFER GONSALEZ	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 6-19-18 [11]
24.	18-20774-D-11 KSR-8	S360 RENTALS, LLC	MOTION FOR EXAMINATION OF LA VIDA INC. AND FOR PRODUCTION OF DOCUMENTS 6-27-18 [92]
25.	18-20774-D-11 KSR-7	S360 RENTALS, LLC	MOTION FOR EXAMINATION OF HARRY YAO AND FOR PRODUCTION OF DOCUMENTS 6-27-18 [94]

26. 18-20774-D-11 S360 RENTALS, LLC — MOTION FOR EXAMINATION OF SLO RENTALS LLC AND FOR PRODUCTION OF DOCUMENTS
KSR-9 — 6-27-18 [98]

27. 18-21981-D-7 ERLINDA GUFFEY — MOTION TO AVOID LIEN OF CENTRAL STATE CREDIT UNION
6-20-18 [31]

Tentative ruling:

This is the debtor's motion to avoid a purported judicial lien held by Central State Credit Union (the "Credit Union") pursuant to § 522(f) of the Bankruptcy Code. The motion will be denied because (1) the purported proof of service, DN 36, is not signed under oath, as required by 28 U.S.C. § 1746; (2) it does not state the manner of service; (3) it does not specifically identify the documents served; and (4) the moving party failed to serve the Credit Union in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The purported proof of service is a letter addressed to the attorney who obtained the Credit Union's abstract of judgment, whereas there is no indication the attorney is authorized to accept service of process on behalf of the Credit Union in bankruptcy contested matters. See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

The court, however, takes judicial notice that the abstract of judgment, a copy of which is attached to the motion, was issued May 29, 2018 and recorded June 11, 2018, both of which dates are several weeks after the debtor commenced this bankruptcy case, on April 2, 2018. The abstract of judgment indicates the judgment was entered on May 8, 2018, also after this case was filed. The docket does not indicate the Credit Union obtained relief from the automatic stay to pursue a judgment or to obtain or record an abstract of judgment. As a result, it appears the entering of the judgment and the issuance and recordation of the abstract of judgment were all done in violation of the automatic stay of § 362(a) and the judgment and abstract of judgment are therefore void. Thus, it appears the Credit Union holds no valid judgment lien for the court to avoid pursuant to § 522(f).

Although this motion will be denied, the debtor is free to pursue other remedies with regard to the judgment and abstract of judgment. The court notes that the debtor filed a "certificate of service" on April 30, 2018, albeit not signed under oath, in which she purported to certify that she had served a true and correct copy of the notice of meeting of creditors on the Credit Union and the law firm that obtained the Credit Union's abstract of judgment, both of whom she added to her Schedule E/F and master address list that day.

The court will hear the matter.

28.	18-23387-D-11	THE FALLS AT ELK GROVE, LLC, A CALIFORNIA LIMITED	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-30-18 [1]
29.	14-32090-D-7 MKJ-1	FREDERICK HALL	MOTION TO AVOID LIEN OF KENT HESPELER AND CAROLYN HESPELER 6-23-18 [26]
30.	14-32090-D-7 MKJ-2	FREDERICK HALL	MOTION TO AVOID LIEN OF WHITE & WHITLEY GROUP, LLC 6-23-18 [30]