UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 31, 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.

1.	18-20603-D-7 PGM-1	GARY/ROBERTA CULBERTSON	MOTION TO AVOID LIEN OF CHASE BANK USA, N.A. 9-23-18 [24]

Final ruling:

This is the debtors' motion to avoid a judicial lien purportedly held by Chase Bank USA, N.A. (the "Bank"). The court is not prepared to consider the motion because it was not properly noticed.

All of the moving papers refer to the holder of the judicial lien as the Bank, whereas the actual holder, according to the abstract of judgment and the application for and renewal of judgment, is Alliance Credit Services, Inc. ("Alliance"). See Debtors' Ex. A, line 3; Debtors' Ex. B, line 1. The moving parties served Alliance through its agent for service of process. However, they served only the notice of hearing, motion, declaration, and points and authorities, and not the exhibits. The documents served refer to the Bank as the holder of the judicial lien. The name of Alliance appears only in the abstract of judgment and application for and renewal of judgment that are among the debtors' exhibits, which, again, were not served. As a result, the documents served were not sufficient to give notice to Alliance that its judicial lien is the lien the debtors are seeking to avoid.

The court will continue the hearing to November 14, 2018, at 10:00 a.m., the moving parties to file a notice of continued hearing that makes it clear that the judicial lien the debtors are seeking to avoid is held by Alliance, not the Bank. The notice of continued hearing is to be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required). The moving parties are to serve the notice of continued hearing, the motion, and all supporting documents, including the exhibits, on Alliance no later than October 31, 2018.

The hearing will be continued by minute order. No appearance is necessary on October 31, 2018.

2. 18-20603-D-7 PGM-2 — GARY/ROBERTA CULBERTSON — MOTION TO AVOID LIEN OF CAPITAL ONE BANK
9-23-18 [30]

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.

3. 18-20603-D-7 PGM-3 — GARY/ROBERTA CULBERTSON — MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
9-23-18 [36]

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.

4. 17-22104-D-7 18-2118 DACQUISTO V. MEGILL ET AL — JOSHUA/ROBIN MEGILL MPD-1 — MOTION FOR ENTRY OF DEFAULT JUDGMENT
9-24-18 [19]

Tentative ruling:

This is the plaintiff's motion for entry of default judgment on his complaint to revoke the defendants' chapter 7 discharge under § 727(d)(2) of the Bankruptcy Code.[1] The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, that does not by itself entitle the trustee to the relief

requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the motion, and for the following reasons, the motion will be denied. Alternatively, the court will continue the hearing to allow the moving party to supplement the record.

"Revocation of discharge is an extraordinary remedy and is construed liberally in favor of the debtor and strictly against those seeking to revoke the discharge." Fitzhugh v. Birdsell (In re Fitzhugh), 2018 Bankr. LEXIS 1145, *10, 2018 WL 1789596 (9th Cir. BAP April 13, 2018), citing Bowman v. Belt Valley Bank (In re Bowman), 173 B.R. 922, 924 (9th Cir. BAP 1994).

The debtors filed their chapter 7 case on March 30, 2017 and received their discharge on July 19, 2017. Just under a year later, on July 16, 2018, the trustee filed his complaint to revoke their discharge, alleging they had knowingly and fraudulently (1) failed to report to him that they had received their 2016 federal tax refund, $6,409; and (2) failed to turn over the refund to him. As alleged in the trustee's complaint, the debtors disclosed on their Schedule A/B their right to 2016 federal and state refunds, in an amount listed as unknown, which they added were "[b]eing held up by IRS regarding Form 1095A" (Health Insurance Marketplace Statement). The trustee testifies in support of this motion that on April 12, 2017, he received copies of the debtors' 2016 federal and state tax returns showing refunds due them of $6,409 and $112, respectively; that on May 9, 2017, he emailed the debtors' attorney about the refunds and immediately received a reply stating the debtors understood that any tax refunds they got belonged to the trustee; that at the meeting of creditors, on May 17, 2017, the debtors agreed to turn over the refunds when received; that on July 19, 2017, the debtors received their discharge; that on November 8, 2017, the trustee sent a follow-up email to the debtors' attorney and an email to the IRS and promptly received a reply from the IRS advising that the debtors had been issued a check for $6,409 on or about June 12, 2017; that on March 12, 2018, the trustee filed a motion for turnover of the tax refunds, which was granted; and that the trustee has not received any of the tax refunds.

There are no factual allegations here or in the trustee's complaint that would support a finding that the debtors fraudulently failed to report their receipt of the refunds or fraudulently failed to turn them over to the trustee, as required by § 727(d)(2). The complaint includes only a bare assertion that the debtors "knowingly and fraudulently" did those things. Bowman, 173 B.R. at 924-25. The trustee has failed to produce any evidence that would support a finding that, in failing to report their receipt of the refunds or in subsequently failing to turn them over to the trustee, the debtors acted both knowingly and fraudulently. See Fitzhugh, 2018 Bankr. LEXIS 1145, at *11, citing Bowman, 173 B.R. at 925 ("Both elements must be met and the plaintiff must prove that the debtor acted with the knowing intent to defraud.").

In essence the trustee is asking the court to make a determination that the debtors fraudulently failed to turn over their tax returns by the mere assertion

that the returns were not turned over.

For the reasons stated, the motion will be denied. Alternatively, the court will continue the hearing to allow the trustee to supplement the record. The court will hear the matter.

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1 The plaintiff is the trustee and the defendants are the debtors in the underlying chapter 7 case. For ease of reference, they will be referred to hereafter as the "trustee" and the "debtors."

5. 18-20604-D-11 BOB COOK COMPANY LLC
CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
2-2-18 [1]

6. 18-25915-D-7 SHANNON FAIRLEY
TRM-1
WASATCH POOL HOLDINGS, LLC
VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
9-28-18 [24]

Final ruling:

This case was dismissed on October 19, 2018. As a result the motion will be denied by minute order as moot. No appearance is necessary.

7. 17-20731-D-11 CS360 TOWERS, LLC
DB-26
CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ARTHUR J. WILLIAMS JR. AND CHRISTOPHER WILLIAMS
8-14-18 [453]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

8. 18-24836-D-7 RPZ-1 — EDDIE/JENNIFER RAINWATER — MOTION FOR RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A. VS. — 9-27-18 [13]

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 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.

9. 18-24539-D-7 — ZENAIDA PERFECTO — CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-29-18 [12]

Final ruling:

This is the debtor's opposition to the trustee's motion to dismiss the case for failure to appear at the § 341 meeting. The record indicates the debtor appeared at the continued meeting, on October 17, 2018, and the meeting was held and concluded. As a result, the trustee's motion will be denied and the case will remain open. The court will issue a minute order denying the trustee's motion. No appearance is necessary.

10. 18-22453-D-7 BJ-2 — ECS REFINING, INC. — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
SUMMITBRIDGE NATIONAL INVESTMENTS V, LLC, VS. — 7-6-18 [248]

11. 18-22453-D-7 FWP-12 — ECS REFINING, INC. — CONTINUED MOTION TO ABANDON
7-6-18 [263]

12.	18-22453-D-7 FWP-13	ECS REFINING, INC.	CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT 7-6-18 [269]
13.	18-22453-D-7 FWP-14	ECS REFINING, INC.	CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT 7-6-18 [276]
14.	18-22453-D-7 FWP-15	ECS REFINING, INC.	CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT 7-6-18 [283]
15.	18-22453-D-7 FWP-24	ECS REFINING, INC.	FINAL HEARING RE: MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR GRANTING RELATED RELIEF 9-28-18 [559]

16. 18-22453-D-7 FWP-25 — ECS REFINING, INC. — MOTION FOR COMPENSATION BY THE LAW OFFICE OF FELDERSTEIN FITZGERALD WILLOUGHBY & PASCUZZI, LLP FOR PAUL J. PASCUZZI, OTHER PROFESSIONAL(S) 10-3-18 [580]

Tentative ruling:

It does not appear from the record that the Chapter 7 Trustee and his counsel have been served or received notice of this motion and hearing. Accordingly, the court is inclined to continue the hearing to allow for service to correct this service defect. Alternatively, if the Trustee or his counsel appear at the hearing and state that they have no opposition, the court may consider the matter.

17. 18-22453-D-7 FWP-26 — ECS REFINING, INC. — MOTION FOR COMPENSATION FOR SIERRACONSTELLATION PARTNERS, LLC, FINANCIAL ADVISOR(S) 10-3-18 [587]

Tentative ruling:

It does not appear from the record that the Chapter 7 Trustee and his counsel have been served or received notice of this motion and hearing. Accordingly, the court is inclined to continue the hearing to allow for service to correct this service defect. Alternatively, if the Trustee or his counsel appear at the hearing and state that they have no opposition, the court may consider the matter.

18. 18-22453-D-7 FWP-27 — ECS REFINING, INC. — MOTION FOR COMPENSATION FOR W. DONALD GIESEKE, CHAPTER 11 TRUSTEE 10-3-18 [606]

Tentative ruling:

The court will use this hearing as a status conference.

19. 18-22453-D-7 FWP-28 — ECS REFINING, INC. — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DELFINO MADDEN OMALLEY COYLE & KOEWLER, LLP FOR DELFINO MADDEN, SPECIAL COUNSEL(S) 10-3-18 [594]

Tentative ruling:

It does not appear from the record that the Chapter 7 Trustee and his counsel have been served or received notice of this motion and hearing. Accordingly, the court is inclined to continue the hearing to allow for service to correct this service defect. Alternatively, if the Trustee or his counsel appear at the hearing and state that they have no opposition, the court may consider the matter.

20. 18-22453-D-7 ECS REFINING, INC. MOTION FOR RELIEF FROM AUTOMATIC STAY
RAP-1 9-19-18 [516]
CHRISTOPHER PRESTON VS.

Tentative ruling:

It does not appear from the record that the Chapter 7 Trustee and his counsel have been served or received notice of this motion and hearing. Accordingly, the court is inclined to continue the hearing to allow for service to correct this service defect. Alternatively, if the Trustee or his counsel appear at the hearing and state that they have no opposition, the court may consider the matter.

21. 13-90863-D-13 LEONCIO ALVARADO CONTINUED ORDER TO SHOW CAUSE
9-5-18 [201]

DEBTOR DISMISSED: 09/09/2015

22. 16-27672-D-7 DAVID LIND MOTION FOR STAY PENDING APPEAL
RE: ORDER APPROVING SALE OF REAL PROPERTY
10-2-18 [656]

Final ruling:

By order filed September 19, 2018 (the "Sale Order"), the court approved the sale by the trustee of the real property located at N. Davis Road, Lodi, California, San Joaquin County APNs 003-080-10 and 003-080-06 (the "Property"). On October 1, 2018, the debtor filed an appeal from the Sale Order, and on October 2, 2018, a document the court construed as a motion to stay the Sale Order pending appeal. The court issued an order setting a hearing on the debtor's motion for a stay pending appeal on October 31, 2018 at 10:00 a.m.

The trustee has filed opposition stating that the sale of the Property closed on October 4, 2018. Under the authority cited by the trustee, the debtor's request for a stay pending appeal is moot. Accordingly, the motion will be denied by minute order. No appearance is necessary.

23. 18-25073-D-7 NLG-1 — ESTELLE YANCEY
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
9-26-18 [22]

24. 17-20981-D-7 TGM-5 — ALEX/PATRICIA FRANCOIS
MOTION FOR COMPENSATION BY THE LAW OFFICE OF BOUTIN JONES INC. FOR THOMAS G. MOUZES, TRUSTEE'S ATTORNEY(S)
10-5-18 [74]

25. 17-20689-D-11 ET-23 — MONUMENT SECURITY, INC.
OBJECTION TO CLAIM OF EVETTE BARRETT, CLAIM NUMBER 39
9-7-18 [320]

Tentative ruling:

This is the debtor's objection to the claim of Evette Barrett (the "claimant"), Claim No. 39 on the court's claims register. The claimant has filed opposition. For the following reasons, the court will overrule the objection and grant the claimant's request for relief from the automatic stay to permit the state court action between the parties to proceed to completion, except as to enforcement of any award or judgment against the debtor.

The claimant's proof of claim demonstrates that in 2015, the claimant, on behalf of herself, the State of California, and other current and former alleged aggrieved employees of the debtor, filed a complaint in Sacramento County Superior Court under the California Private Attorneys General Act ("PAGA") for civil penalties for alleged violations of various sections of the California Labor Code. A copy of the complaint is attached to the proof of claim. As the claimant contends, the debtor's so-called evidence in support of the objection is insufficient to overcome the prima facie validity afforded the claim under Fed. R. Bankr. P. 3001(f), and the debtor has made no persuasive argument that the claim, on its face, is not entitled to prima facie validity.

The debtor's only "evidence" in support of the objection is a declaration of Spencer Short, who testifies he is "Chief Counsel for Debtor," and has been since November 2016. He does not indicate whether he was the debtor's counsel in the PAGA

action. Mr. Short purports to have personal knowledge of each of the following statements and testifies to them under penalty of perjury:

> 2. On November 23, 2015, Evette Barrett filed a complaint seeking penalties for alleged meal and rest break violations, wage violations, and related remedies, against Debtor, Monument Security Inc. (See [court name and case number]).
>
> 3. Debtor disputes Mr. [sic] Barrett's claims against Debtor and actively defended itself in this litigation until the matter was stayed upon the filing of this Chapter 11 Bankruptcy.
>
> 4. Debtor contends that the employees of [the debtor] were given proper meal and rest breaks, paid in accordance with California Law and that no penalties are owed.
>
> 5. Even if the Debtor is wrong, penalties in the amount of $90,270,000 would be unjust as it would result in other unsecured creditors receiving literally fractions of a penny on their claims.

Short Decl., filed Sept. 7, 2018, at 1:24-2:9. The court believes Mr. Short has personal knowledge of the allegations set forth in paragraph 2 and, presumably, paragraph 3.

As for the allegations in paragraphs 4 and 5, however, although it may be true that the debtor believes those things, that does not make them true. To the extent Mr. Short believes those things to be true, he is stating, at best, his opinions, without foundation and without demonstrating he has any personal knowledge of the facts underlying the opinions. To the extent his opinions are intended as the opinions of an expert witness, his testimony is conclusory in the extreme and does not begin to satisfy the requirements of Fed. R. Evid. 702, incorporated herein by Fed. R. Bankr. P. 9017. Thus, the debtor has submitted no admissible evidence tending to any extent to overcome the prima facie validity of Ms. Barrett's claim.

The debtor contends the amount of the claim, $92,270,000, is on its face "unjust, arbitrary and oppressive, or confiscatory," such that the court has the authority under PAGA to award a lesser amount. In a breakdown attached to her proof of claim, the claimant asserts the amount is the maximum of the civil penalties that might be awarded under PAGA based on the number of alleged aggrieved employees, 3,000, the number of different alleged Labor Code violations, seven, and the number of pay periods involved, 78,000 (26 pay periods x 3,000 employees). The claimant acknowledges the actual amount that may be awarded is likely significantly less, but argues the amount should be determined based on the evidence, not on an attorney's conclusory statement. The court agrees.

The PAGA action involves exclusively issues of state law, which the state court is better suited to determine than this court. Based on the number of the debtor's employees, which the debtor states in its amended disclosure statement has regularly been more than 1,000, and the highly detailed nature of the charges of Labor Code violations, the litigation is likely to be lengthy and complicated, and the court finds that the state court is in a far better position to determine the issues. Accordingly, the court will grant the claimant's request for relief from stay to permit the PAGA action to proceed to completion, with the limitation that the claimant and others on whose behalf penalties may be imposed against the debtor may not enforce any award or judgment against the debtor absent further order of this

court.

The court will hear the matter.

26. 17-20689-D-11 ET-24 — MONUMENT SECURITY, INC. — OBJECTION TO CLAIM OF NKAYLA BARNES, CLAIM NUMBER 28 9-7-18 [324]

Tentative ruling:

This is the debtor's objection to the claim of N'Kayla Barnes, Claim No. 28 on the court's claims register. The claimant has filed opposition. For the following reasons, the court will overrule the objection and sua sponte grant relief from the automatic stay to permit the district court action between the parties to proceed to completion, except as to enforcement of any award or judgment against the debtor.[1]

The claimant's proof of claim demonstrates that in 2016, the claimant filed a complaint for sexual harassment and wrongful termination against the debtor and another defendant in the United States District Court for the Northern District of California. A copy of the complaint is attached to the proof of claim. As the claimant contends, the debtor has the burden of submitting evidence tending to defeat the claim by probative force equal to the allegations of the claim. The court concludes the debtor's so-called evidence is insufficient to overcome the prima facie validity afforded the claim under Fed. R. Bankr. P. 3001(f), and the debtor has made no persuasive argument that the claim, on its face, is not entitled to prima facie validity.

The debtor's only "evidence" in support of the objection is a declaration of Spencer Short, who testifies he is "Chief Counsel for Debtor," and has been since November 2016. He does not indicate whether he was the debtor's counsel in the claimant's district court action. The court notes that a different firm filed an answer on behalf of the debtor in that action, and yet another attorney took the claimant's deposition. That attorney identified himself at the deposition only as the attorney for the defendant; the court cannot determine whether he was acting as attorney for the debtor or for the debtor's co-defendant.

Mr. Short purports to have personal knowledge of each of the following statements and testifies to them under penalty of perjury:

> **2. On May 8, 2017 N'Kayla Barnes filed a complaint alleging hostile environment sex harassment, ... ([Case number]).**
>
> **3. Debtor disputes Ms. Barnes' claims against Debtor and defended itself in this litigation until the matter was stayed upon the filing of this Chapter 11 Bankruptcy.**
>
> **4. Debtor believes that co-defendant Jetro Holdings LLC is liable to N'kayla Barnes for her claims, not Debtor since the alleged sexual assault was allegedly committed by an employee of Jetro Holdings LLC., on the Jetro Holdings, LLC. Worksite, and further involving Jetro Holdings, LLC. management after the assault had occurred.**
>
> **5. Debtor further believes that its potential exposure is significantly**

less than claimed in N'kayla Barnes' Claim filed with this Court, Claim No. 28.

Short Decl., filed Sept. 7, 2018, at 1:24-2:10. The court believes Mr. Short has personal knowledge of the allegations set forth in paragraph 2 and, presumably, paragraph 3.[2]

As for the allegations in paragraphs 4 and 5, however, although it may be true that the debtor believes those things, that does not make them true. To the extent Mr. Short believes those things to be true, he is stating, at best, his opinions, without foundation and without demonstrating he has any personal knowledge of the facts underlying the opinions. To the extent his opinions are intended as the opinions of an expert witness, his testimony is conclusory in the extreme and does not begin to satisfy the requirements of Fed. R. Evid. 702, incorporated herein by Fed. R. Bankr. P. 9017. Thus, the debtor has submitted no admissible evidence tending to any extent to overcome the prima facie validity of Ms. Barnes' claim.

The debtor contends the proof of claim lacks sufficient documentation and supporting evidence to entitle it to prima facie validity. The debtor is not correct. First, the claimant attached a copy of her district court complaint to her proof of claim. Second, the requirement that a proof of claim be supported by documentation is in Fed. R. Bankr. P. 3001(c)(1) – such documentation is required only for a claim that is based on a writing. Ms. Barnes' claim is not based on a writing. And the notion that a proof of claim must be supported by evidence reflects a misunderstanding or lack of appreciation of the meaning of prima facie validity, as used in Rule 3001(f).

The debtor contends the claim lacks any indication of how the amount was calculated or whether the amount is considered to be all of the claimant's damages or just the debtor's portion. The debtor has submitted no authority for the proposition that a claim must state how the amount was calculated, particularly where the claim is based on unliquidated tort claims.

The district court action involves exclusively issues of state law and federal civil rights law, which the district court is better suited to determine than this court. Further, there is another party to the action over whom this court would have no jurisdiction. Trying the issues in this court as against the debtor only would be unnecessarily duplicative of the district court trial involving the other party. Permitting the litigation to proceed in the district court will promote judicial efficiency and economy, allow for complete relief to be afforded the claimant against both defendants in a single forum, avoid unnecessary duplication of effort and expense, and avoid the possibility of inconsistent judgments. These interests outweigh any likely prejudice to the debtor from granting such relief. Thus, the court will lift the automatic stay to permit the district court action to proceed to completion, with the limitation that the claimant may not enforce any award or judgment against the debtor absent further order of this court.

The court will hear the matter.

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1 The court has the power to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, *24-25 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

2 The court notes that Short is wrong about the date the claimant's district

court complaint was filed. The complaint was filed June 14, 2016. The date cited by Mr. Short, May 8, 2017, is the date the claimant's proof of claim was filed in this case.

27. 17-20689-D-11 ET-25 MONUMENT SECURITY, INC. OBJECTION TO CLAIM OF STEPHEN KENT ROSE, CLAIM NUMBER 13 9-7-18 [328]

Tentative ruling

This is the debtor's objection to the claim of Stephen Kent Rose, Claim No. 13 on the court's claims register. The court points out the following defects:

First, the notice of hearing states, "If you oppose Debtor's objection, or if you want the court to consider your views on this matter, not later than 14 days after the mailing of this notice, you or your attorney must file an opposition or a written request for a hearing." This language is contrary to LBR 3007-1(b)(1)(A). The moving party served the objection on September 7, 2018; thus, under the language of the notice, written opposition would have been due by September 21, 2018, whereas under the local rule, it would have been due by October 17, 2018. Further, the local rule does not provide that an opposing party must or may file a written request for a hearing; instead, the hearing is set by the party filing the objection. Finally, the notice of hearing does not include the language required by LBR 9014-1(d)(3)(B)(ii) and (iii), both of which apply to claim objections. See second sentence of LBR 9014-1(a).

The claimant's proof of claim demonstrates that in January 2017, the claimant filed an amended complaint in Alameda County Superior Court for damages for assault, battery, false imprisonment, and intentional infliction of emotional distress. A copy of the complaint is attached to the claimant's proof of claim. The court concludes the debtor's so-called evidence is insufficient to overcome the prima facie validity afforded the claim under Fed. R. Bankr. P. 3001(f), and the debtor has made no persuasive argument that the claim, on its face, is not entitled to prima facie validity.

The debtor's only "evidence" in support of the objection is a declaration of Spencer Short, who testifies he is "Chief Counsel for Debtor," and has been since November 2016. He does not indicate whether he was the debtor's counsel in the state court action. Mr. Short purports to have personal knowledge of each of the following statements and testifies to them under penalty of perjury:

> 2. On January 6, 2017 Stephen Kent Rose filed a complaint [for] intentional tort and exemplary damages. ([Case number]).
>
> 3. Debtor disputes Mr. Rose's claims against Debtor and defended itself in this litigation until the matter was stayed upon the filing of this Chapter 11 Bankruptcy.
>
> 5. Debtor further believes that its potential exposure is significantly less than claimed in Stephen Kent Rose's Claim filed with this Court, Claim No. 13.

Short Decl., filed Sept. 7, 2018 ("Decl."), at 1:24-2:2. The court believes Mr.

Short has personal knowledge of the allegations set forth in paragraph 2 and, presumably, paragraph 3. The paragraph 4 included in Mr. Short's declarations supporting the debtor's objections to other claims that are also on this calendar – a paragraph alleging the debtor is not liable for the claim – is missing from this declaration.

As for the allegation in paragraph 5, although it may be true that the debtor believes its potential exposure is significantly less than claimed, that does not make it true. To the extent Mr. Short believes it to be true, he is stating, at best, his opinion, without foundation and without demonstrating he has any personal knowledge of the facts underlying the opinion. To the extent his opinion is intended as the opinion of an expert witness, his testimony is conclusory in the extreme and does not begin to satisfy the requirements of Fed. R. Evid. 702, incorporated herein by Fed. R. Bankr. P. 9017. Thus, the debtor has submitted no admissible evidence tending to any extent to overcome the prima facie validity of Mr. Rose's claim.

The debtor acknowledges the claimant attached a copy of his state court complaint to his proof of claim, but complains the claimant submitted "no other supporting documentation to corroborate the allegations." Debtor's Obj., filed Sept. 7, 2018, at 2:17. Thus, the debtor objects to the claim on the ground that it "lacks sufficient supporting evidence." Id. at 2:21. The debtor is not correct. The requirement that a proof of claim be supported by documentation is in Fed. R. Bankr. P. 3001(c)(1) – such documentation is required only for a claim that is based on a writing. Mr. Rose's claim is not based on a writing. And the notion that a proof of claim must be supported by evidence reflects a misunderstanding or lack of appreciation of the meaning of prima facie validity, as used in Rule 3001(f).

The debtor contends the claim lacks any indication of how the amount was calculated or whether the amount is considered to be all of the claimant's damages or just the debtor's portion. The debtor has submitted no authority for the proposition that a claim must state how the amount was calculated, particularly where the claim is based on unliquidated tort claims.

As a result of these notice and evidentiary defects, the objection will be overruled. The court will hear the matter.

28.	17-20689-D-11 ET-26	MONUMENT SECURITY, INC.	OBJECTION TO CLAIM OF AUSTIN FOWLER, CLAIM NUMBER 29 9-7-18 [332]

Tentative ruling

This is the debtor's objection to the claim of Austin Fowler, Claim No. 29 on the court's claims register. The court points out the following defects:

First, the notice of hearing states, "If you oppose Debtor's objection, or if you want the court to consider your views on this matter, not later than 14 days after the mailing of this notice, you or your attorney must file an opposition or a written request for a hearing." This language is contrary to LBR 3007-1(b)(1)(A). The moving party served the objection on September 7, 2018; thus, under the language of the notice, written opposition would have been due by September 21, 2018, whereas

under the local rule, it would have been due by October 17, 2018. Further, the local rule does not provide that an opposing party must or may file a written request for a hearing; instead, the hearing is set by the party filing the objection. Finally, the notice of hearing does not include the language required by LBR 9014-1(d)(3)(B)(ii) and (iii), both of which apply to claim objections. See second sentence of LBR 9014-1(a).

The claimant's proof of claim demonstrates that, in January 2017, the debtor was added as a defendant to a complaint filed by the claimant against other defendants in Sonoma County Superior Court for damages for personal injury. The claimant has obtained relief from stay to pursue the state court action, with the limitation that any recovery against the debtor will be limited to its insurance policy proceeds. The court concludes the debtor's so-called evidence is insufficient to overcome the prima facie validity afforded the claim under Fed. R. Bankr. P. 3001(f), and the debtor has made no persuasive argument that the claim, on its face, is not entitled to prima facie validity.

The debtor's only "evidence" in support of the objection is a declaration of Spencer Short, who testifies he is "Chief Counsel for Debtor," and has been since November 2016. He does not indicate whether he was the debtor's counsel in the state court action. Mr. Short purports to have personal knowledge of each of the following statements and testifies to them under penalty of perjury:

> 2. On March 20, 2015 Austin Fowler filed a complaint alleging personal injury arising out of a motor vehicle accident on March 23, 2013. ([Case number]).
>
> 3. Debtor disputes Mr. Fowler's claims against Debtor and defended itself in this litigation until the matter was stayed upon the filing of this Chapter 11 Bankruptcy.
>
> 4. Debtor believes that co-defendant Andy Bruno is liable to Austin Fowler for his claims, not Debtor since the act was committed by him.
>
> 5. Debtor further believes that its potential exposure is significantly less than claimed in Austin Fowler's Claim filed with this Court, Claim No. 29.

Short Decl., filed Sept. 7, 2018 ("Decl."), at 1:24-2:4. The court believes Mr. Short has personal knowledge of the allegations set forth in paragraph 2 and, presumably, paragraph 3.

As for the allegations in paragraphs 4 and 5, however, although it may be true that the debtor believes those things, that does not make them true. To the extent Mr. Short believes those things to be true, he is stating, at best, his opinions, without foundation and without demonstrating he has any personal knowledge of the facts underlying the opinions. To the extent his opinions are intended as the opinions of an expert witness, his testimony is conclusory in the extreme and does not begin to satisfy the requirements of Fed. R. Evid. 702, incorporated herein by Fed. R. Bankr. P. 9017. Thus, the debtor has submitted no admissible evidence tending to any extent to overcome the prima facie validity of Mr. Fowler's claim.

The debtor objects to the claim on the ground that it lacks sufficient supporting evidence. Id. at 2:21. The debtor is not correct. The notion that a proof of claim must be supported by evidence reflects a misunderstanding or lack of

appreciation of the meaning of prima facie validity, as used in Rule 3001(f).

The debtor contends the claim lacks any indication of how the amount was calculated or whether the amount is considered to be all of the claimant's damages or just the debtor's portion. The debtor has submitted no authority for the proposition that a claim must state how the amount was calculated, particularly where the claim is based on unliquidated tort claims.

As a result of these notice and evidentiary defects, the objection will be overruled. The court will hear the matter.

29. 15-29890-D-7 HLH-1 — GRAIL SEMICONDUCTOR — OBJECTION TO CLAIM OF SEDGWICK FUNDING CO., LLC, CLAIM NUMBER 12 9-28-18 [1108]

Final ruling:

This is the objection of Mitchell J. NewDelman, Willis E. Higgins, and Frank B. Holze (the "NewDelman Group") to the claim of Sedgwick FundingCo, LLC ("Sedgwick"). On October 19, 2018, the trustee filed a stipulation signed by her counsel and counsel for the NewDelman Group which (1) observes that the court has granted the trustee's motion for approval of a compromise with Sedgwick that provides for allowance of Sedgwick's claim as modified; and (2) states that the NewDelman Group's objection to Sedgwick's claim shall be withdrawn without prejudice. Accordingly, the matter will be removed from calendar.

30. 18-25693-D-7 EMM-1 — ERIC DAVIS — MOTION FOR RELIEF FROM AUTOMATIC STAY
BROKER SOLUTIONS, INC. VS. — 10-2-18 [11]

Final ruling:

Pursuant to the Notice of Continued Hearing filed October 26, 2018 this matter is continued to November 28, 2018 at 10:00 a.m. No appearance is necessary on October 31, 2018.

31. 18-22453-D-7 WFH-5 — ECS REFINING, INC. — MOTION FOR ORDER AUTHORIZING TRUSTEE TO OPERATE BUSINESS FOR LIMITED PERIOD OF TIME 10-12-18 [637]

32. 18-22453-D-7 WFH-2 — ECS REFINING, INC. — FINAL HEARING RE: MOTION TO USE CASH COLLATERAL
10-12-18 [632]

33. 18-25466-D-7 VVF-1 — ANNA FLORES
AMERICAN HONDA FINANCE CORPORATION VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
10-15-18 [14]

34. 18-20774-D-11 KSR-13 — S360 RENTALS, LLC — CONTINUED MOTION TO COMPEL
10-3-18 [179]

Tentative ruling:

Creditor Ronald Elvidge has filed motions to compel the production of documents by the debtor's manager, Raymond Sahadeo, Sahadeo's wife Brenna LaBine, and LaBine's corporation, La Vida, Inc. pursuant to subpoenas issued by Elvidge as permitted by orders permitting examinations under Fed. R. Bankr. P. 2004. At the initial hearing, the parties indicated they have reached a resolution; however, as of this date, no stipulation has been filed. If no stipulation is filed at or before the time of the hearing, the court intends to adopt the tentative ruling it issued in connection with the initial hearing, which appears in the court's minutes for the October 17, 2018 hearing. Accordingly, the court will deny the motion as to Request Nos. 5, 6, and 7 of the subpoena on the ground that discovery in connection with the dispute between Elvidge and Sahadeo would be more appropriately conducted in state court litigation between them. As to the remainder of the requests, the motion will be granted and the responding party will be required to produce the requested documents within 15 days from the date of the order on the motion.

The court will hear the matter.

35. 18-20774-D-11 — S360 RENTALS, LLC — CONTINUED MOTION TO COMPEL

KSR-12 10-3-18 [183]

Tentative ruling:

Creditor Ronald Elvidge has filed motions to compel the production of documents by the debtor's manager, Raymond Sahadeo, Sahadeo's wife Brenna LaBine, and LaBine's corporation, La Vida, Inc. pursuant to subpoenas issued by Elvidge as permitted by orders permitting examinations under Fed. R. Bankr. P. 2004. At the initial hearing, the parties indicated they have reached a resolution; however, as of this date, no stipulation has been filed. If no stipulation is filed at or before the time of the hearing, the court intends to adopt the tentative ruling it issued in connection with the initial hearing, which appears in the court's minutes for the October 17, 2018 hearing. Accordingly, the court will deny the motion as to Request Nos. 5, 6, and 7 of the subpoena on the ground that discovery in connection with the dispute between Elvidge and Sahadeo would be more appropriately conducted in state court litigation between them. As to the remainder of the requests, the motion will be granted and the responding party will be required to produce the requested documents within 15 days from the date of the order on the motion.

The court will hear the matter.

36. 18-20774-D-11 S360 RENTALS, LLC CONTINUED MOTION TO COMPEL
KSR-14 10-3-18 [175]

Tentative ruling:

Creditor Ronald Elvidge has filed motions to compel the production of documents by the debtor's manager, Raymond Sahadeo, Sahadeo's wife Brenna LaBine, and LaBine's corporation, La Vida, Inc. pursuant to subpoenas issued by Elvidge as permitted by orders permitting examinations under Fed. R. Bankr. P. 2004. At the initial hearing, the parties indicated they have reached a resolution; however, as of this date, no stipulation has been filed. If no stipulation is filed at or before the time of the hearing, the court intends to adopt the tentative ruling it issued in connection with the initial hearing, which appears in the court's minutes for the October 17, 2018 hearing. Accordingly, the court will deny the motion as to Request Nos. 5, 6, and 7 of the subpoena on the ground that discovery in connection with the dispute between Elvidge and Sahadeo would be more appropriately conducted in state court litigation between them. As to the remainder of the requests, the motion will be granted and the responding party will be required to produce the requested documents within 15 days from the date of the order on the motion.

The court will hear the matter.

37. 18-25180-D-7 AIGALESALA LIMU AMENDED TRUSTEE'S MOTION TO
GR-1 DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING OF
CREDITORS
9-26-18 [15]

38. 18-25998-D-7 WILLESHA FORD
VVF-1
AMERICAN HONDA FINANCE
CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-12-18 [11]