UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

December 9, 2015 at 10:00 A.M.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

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1. 14-29905-D-11 RAVINDER GILL — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
10-2-14 [1]

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

2. 14-29905-D-11 RAVINDER GILL — CONFIRMATION OF AMENDED PLAN OF REORGANIZATION FILED BY DEBTOR
BSJ-7 — 7-1-15 [115]

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

3. 14-29905-D-11 RAVINDER GILL
UST-2

MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE
10-5-15 [139]

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

4. 14-28709-D-7 JAMES/ERICKA BARNEY
BHT-1

PROVIDENT FUNDING ASSOCIATES, LP VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-29-15 [109]

5. 15-23511-D-7 SCOTT COURTNEY
SCB-5

MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER(S), MOTION FOR COMPENSATION FOR WEST AUCTIONS, INC., AUCTIONEER(S) AND/OR MOTION TO SHARE THE APPRAISAL FEE WITH THE DEBTOR
11-10-15 [32]

6. 15-27611-D-12 TERRY/VERA ADAMS

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-29-15 [1]

Tentative ruling:

This is the continued status conference in this chapter 12 case. The court does not ordinarily issue tentative rulings for chapter 12 status conferences; however, the court has several concerns about this case as a result of which the court intends to consider dismissal of the case, as permitted by the terms of the court's Order to (1) File Status Report; and (2) Attend Status Conference, filed

September 30, 2015 (the "Scheduling Order").

By the terms of the Scheduling Order, the debtors were required, no later than October 9, 2015, to (1) serve the Scheduling Order and (2) file and serve a status report. The debtors did neither. Instead, on October 1, 2015, the debtors' counsel, Bruce Dwiggins, filed a request to reschedule the status conference, which was then set for October 21, 2015, to November 30, 2015 on the ground he would be in Italy from October 19, 2015 to November 20, 2015. In other words, counsel did not plan to leave for Italy until 10 days after the date he was required to serve the Scheduling Order and file and serve a status report. He did not explain in the request why he was unable to do either of those things in compliance with the Scheduling Order. He also purported to set the continued status conference for hearing in Department A of this court whereas the case is assigned to Department D. For reasons that are not reflected on the court's docket, the status conference was not continued.

Thus, at the status conference, on October 21, 2015, Douglas Jacobs, an attorney who is not affiliated with Mr. Dwiggins' law firm, made a "special appearance" on Mr. Dwiggins' behalf. Mr. Jacobs advised the court Mr. Dwiggins was out of the country and requested the status conference be continued. The court permitted Mr. Jacobs to be heard despite the fact that the court's local rules do not permit special appearances. The court then continued the status conference to this date, requiring the debtors to file and serve a notice of continued status conference by October 26, 2015 and to file and serve a status report by November 10, 2015. The court added that Mr. Dwiggins would be required to appear at the continued status conference.

On October 22, 2015, Mr. Jacobs, signing "for Bruce C. Dwiggins, Attorney for debtors," filed a notice of continued status conference in which he referred to and attached as an exhibit a copy of the Scheduling Order. He apparently asked a staff member at Mr. Dwiggins' law firm to serve the notice – a proof of service was filed the same day, October 22, 2015, signed by an individual who gave her business address as Mr. Dwiggins' address. However, the declarant did not trouble to change the title of the document she served or the date of her signature. Thus, the proof of service purports to have been signed on October 1, 2015 and to evidence service of a Request to Reschedule Status Conference to December 9, 2015. It does not evidence service of the notice of continued status conference.

On November 4, 2015, Mr. Jacobs, again "for" Mr. Dwiggins, signed and filed a Status Report. A proof of service was filed the same day evidencing service of the status report on all required parties (although with one incorrect address – see below). The Status Report gives the court pause for several reasons. First, for an attorney who is not a party's attorney of record to sign and file a notice of continued hearing is one thing; to sign and file a status report making substantive representations to the court and creditors about the reason the case was filed, the debtors' activities since the filing, and the direction of the case post-petition is quite another.

Second, Mr. Jacobs states that since the filing, "the debtors have marshalled their livestock and are seeking to sell some of the ewes and goats" (Status Report at 2:1-2), adding that "[t]he only anticipated post-confirmation sale of assets is the sale of livestock; and such should not involve the involvement of the court." Id. at 2:17-19. According to the debtors' Schedule B, when the case was filed, they had 15 breeding goats, 8 kid goats, 150 ewes, and up to 100 "lambs for market." While the notation "for market" may indicate the debtors are in the business of

selling lambs, there is no indication they are in the business of selling the other types of animals, and thus, no reason to believe the sales of ewes and goats referred to in the Status Report is in the ordinary course of the debtors' business such that the debtors would not need prior court approval for such sales, pursuant to § 363(b). Even as to the lambs, the record is far from clear the debtors' sales would be in the ordinary course of their business.

Third, Mr. Jacobs states that "[n]o motions have been filed concerning cash collateral or adequate protection orders." Status Report at 2:9-10. True enough. The question, though, is why not. According to the debtors' Schedules D and E, the USDA Farm Service Agency has liens against the debtors' real properties and their "materials and animals etc." to secure a $715,447 debt and the IRS and Franchise Tax Board have both filed tax liens to secure debts totaling $90,039. (According to the IRS' and Franchise Tax Board's proofs of claim, their liens secure smaller debts than estimated by the debtors but sizeable nonetheless – $22,772 and $6,412, respectively.) The debtors may not have been deriving any income from their animals but to the extent they have, it appears they have been using the cash collateral of the Farm Service Agency and the taxing agencies without court approval.

One additional note. The USDA Farm Service Agency is the debtors' largest creditor. Yet they have failed to schedule it at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

To conclude, the court has serious concerns about the handling and direction of this case. Mr. Dwiggins has apparently failed to pay it any attention since he filed his request to reschedule the status conference, on October 1. The court recognizes the value of a vacation, but questions the decision to take on a new chapter 12 case at a time when counsel likely knows he will be out of the country almost immediately for a month. Having taken on the case, though, counsel has the same obligations he would have if he were not leaving the country, including to comply with court orders like the Scheduling Order. Here, Mr. Dwiggins requested only a continuance of the status conference; he did not request a continuance of the deadlines to serve the Scheduling Order and file and serve a status report, both of which were due 10 days before he planned to leave the country. And after the October 21 status conference, the court would have expected Mr. Dwiggins to communicate with the debtors or Mr. Jacobs and, at the very least, to prepare and sign a status report despite the fact he was on vacation. After all, communication worldwide is not a hardship in this day and age. Instead, what has been exhibited in this case is a complete lack of attention and concern which the court finds troubling.

The court will hear the matter.

7.	15-25034-D-7 RJ-3	ANDREW WONG	MOTION TO AVOID LIEN OF GMAC, LLC 10-23-15 [28]

Final ruling:

This is the debtor's motion to avoid an alleged judicial lien of GMAC, LLC ("GMAC"). The motion will be denied because the moving party failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate he is entitled to the relief requested, as required by LBR 9014-1(d)(6).

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

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)." Mohring, 142 B.R. at 391. Here, there is insufficient evidence of a judicial lien held by GMAC, as created by an abstract of judgment recorded in the county in which the debtor's property is located. The debtor has filed as an exhibit a copy of an unrecorded abstract of judgment. There is no copy of the recorded abstract of judgment on file; thus, the debtor has failed to demonstrate that GMAC holds a judicial lien that impairs the debtor's exemption.

"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 the recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

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

8. 15-25034-D-7 ANDREW WONG — MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
RJ-4 — 10-26-15 [34]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

9. 15-25034-D-7 ANDREW WONG — MOTION TO AVOID LIEN OF RIVERWALK HOLDINGS, LTD
RJ-5 — 10-26-15 [38]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

10. 15-25034-D-7 ANDREW WONG — MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS
RJ-6 — 10-26-15 [42]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

11. 15-26335-D-7 GARY/CANDIS VAUGHAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 11-2-15 [25]

U.S. BANK, N.A. VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the 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.

12. 15-27235-D-7 MARY PIRES — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-1 — 10-28-15 [27]

WELLS FARGO BANK, N.A. VS.

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court 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.

13. 14-31544-D-7 SANDRA PELTOLA — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SANDRA LYNN PELTOLA
BLL-2 — 11-5-15 [29]

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.

14. 15-23746-D-7 GORDON BONES
15-2160 BLF-1
MELISSA JOSEPH, AS TRUSTEE OF THE RICHARD W. DE SI V. BONES

MOTION TO DISMISS ADVERSARY PROCEEDING
11-6-15 [23]

Tentative ruling:

This is the defendant's motion to dismiss the plaintiffs' complaint pursuant to Fed. R. Civ. P. 12(b)(6), made applicable in this proceeding by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. The plaintiffs have filed opposition. For the following reasons, the motion will be denied without prejudice, and the court will grant relief from stay to permit the parties to proceed with pending state court litigation.

The plaintiffs are two of the beneficiaries of a family living trust, the trustor of which was represented at times during the estate planning process by the defendant, who is an attorney. The plaintiffs allege in their complaint that during a legal challenge to the trust brought by a third beneficiary after the trustor's death, the defendant gave contradictory testimony about the trustor's state of mind that resulted in the plaintiffs incurring significant attorney's fees and being forced to pay more than they should have had to pay to settle the trust challenge. The plaintiffs also contend the defendant falsely inflated his fees for the services he performed for the trustor; that in an attempt to secure payment of his fees, he filed a UCC-1 financing statement falsely claiming a security interest in certain real properties belonging to the trust or the trustor and falsely asserting that the debt for his fees was undisputed; and that he also recorded the financing statement with the Sacramento County Recorder.

The seventh, eighth, and ninth causes of action of the plaintiffs' complaint purport to state claims for relief under the Bankruptcy Code – under § 523(a)(2), (4), and (6), respectively. The first five causes of action, although they contain factual allegations essential to the bankruptcy causes of action, are themselves based on state law: they purport to state claims for attorney malpractice, fraud and deceit, breach of fiduciary duty, slander of title, and violations of the California Unfair Competition Law, respectively. (There is no sixth cause of action.) These causes of action are substantially similar, if not identical, to causes of action set forth in the plaintiffs' first amended complaint against the defendant filed in a Sacramento County Superior Court action commenced sometime in 2014, at least several months before the defendant commenced his bankruptcy case. (A copy of the amended complaint appears in this court's record as an exhibit to the complaint in this adversary proceeding.)

The court finds that all of the plaintiffs' causes of action, except to the extent they seek a determination of nondischargeability, would be more appropriately determined by the state court. There is already a pending state court action in which the plaintiffs assert the same causes of action they have alleged here. The factual allegations of the complaint in this adversary proceeding predominantly raise issues of state law, not bankruptcy law. The defendant indicates in a motion to modify the pretrial scheduling order and for consolidation and joinder, Item 43 on this calendar, that joinder of a third party – another attorney the defendant claims committed malpractice in connection with the trust – is appropriate. As discussed in the court's ruling on Item 43, this court would have no jurisdiction over the defendant's or the plaintiffs' claims against that third party, whereas the

defendant will have the opportunity to seek to join that party in the state court action.

The defendant has also raised an argument that the plaintiffs' counsel has a conflict of interest in that he was appointed by the state court in the trust challenge to represent the interests of a minor child beneficiary – who is one of the plaintiffs in this adversary proceeding – and that he cannot now represent the other plaintiff as well. The defendant states that "a Motion for Disqualification of [the plaintiffs' counsel] is applicable." That is a motion that would be more appropriately determined by the state court than by this court.[1] Finally, the interests of both judicial economy and minimizing delay and expense to the parties are best served by having the plaintiffs' claims, except the determination of dischargeability, tried in a single court, and the predominantly state law nature of the claims counsels in favor of allowing the state court action to proceed first.

Thus, the court will grant the parties relief from stay to proceed to judgment in the state court and will stay this adversary proceeding, with the parties to return to this court for a determination of the dischargeability issues, over which this court has exclusive jurisdiction,[2] in the event the plaintiffs obtain a monetary award in the state court or some other award that would fall within the scope of a chapter 7 discharge. Enforcement of any state court judgment, except a judgment for injunctive relief, will be left to this court.

Finally, the defendant's Rule 12(b)(6) arguments are directed to the sufficiency (or lack thereof) of the plaintiffs' state law claims. For example, the defendant contends the plaintiffs have failed to sufficiently allege that but for the alleged malpractice, they would have achieved a better result in the trust challenge. He also asserts the action is barred by the California statute of limitations on legal malpractice claims. These are issues that equally appropriately decided by the state court as by this court, if not more so. Thus, the court will deny the defendant's motion without prejudice and he will have the opportunity to test the sufficiency of the pleadings in the state court action.

Like the motion, the plaintiffs' opposition, except for an argument that the motion itself is untimely, which is rejected,[3] and references to what the plaintiffs themselves acknowledge are extraneous matters, is directed entirely to issues of state law. Nothing in the opposition suggests any reason the court should not lift the stay to permit the state court action to proceed, and at the same time, stay this adversary proceeding. Although there is authority for the proposition that the court may lift the automatic stay sua sponte,[4] it is not precedential authority. Therefore, the court will allow the parties to brief the issue if they wish, with the caution that the party opposing this procedure faces a heavy burden.

The court will hear the matter.

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1 According to the amended complaint in the state court action, both of the plaintiffs in this adversary proceeding are plaintiffs in the state court action and both are represented by the same attorney. Thus, the issue arises in the state court action and may be decided there.

2 Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 869 (9th Cir. 2005).

3 This argument is rejected. The defendant was required by Fed. R. Bankr. P. 7012(a) (not Fed. R. Civ. P. 12(a)(4)(A), cited by the plaintiffs) to respond to the complaint within 14 days after notice that his earlier motion to dismiss had been

denied. Depending on what "after notice means," the defendant filed this motion, at most, 16 days later.

4 See Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, *25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

15.	12-23149-D-7 DNL-2	VICTOR/NADEZHDA TIKHOMIROV	MOTION TO AVOID LIEN OF CHASE BANK USA, N.A. 11-11-15 [39]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

16.	12-23149-D-7 DNL-3	VICTOR/NADEZHDA TIKHOMIROV	MOTION TO AVOID LIEN OF DISCOVER BANK 11-11-15 [45]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

17.	12-23149-D-7 DNL-4	VICTOR/NADEZHDA TIKHOMIROV	MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS 11-11-15 [50]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

18. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED MOTION FOR SUMMARY JUDGMENT
12-2402 HLC-1 — 7-6-15 [99]
BURKART V. CHAND

Tentative ruling:

This is the motion of the plaintiff in this adversary proceeding, who is the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment in favor of the trustee and against the defendant, Vinesh Chand (the "defendant"), in the amount of $61,135.11. The defendant has not filed opposition. For the following reason, the court intends to deny the motion.

The court's tentative ruling posted in advance of the initial hearing on this motion raised an issue concerning service. The hearing has been continued twice but the trustee has failed to address the service issue in any way. Thus, the court intends to deny the motion on the ground that the trustee served the motion, as well as the summons and complaint in this adversary proceeding, on the defendant at an address the trustee knew or should have known was outdated.

The trustee served this motion on the defendant at an address on Waterman Road in Sacramento. That is the same address at which the trustee served the defendant with the complaint and amended complaint in this proceeding, in August of 2012 and March of 2013, respectively. In September of 2013, the court denied the trustee's motion for entry of a default judgment against the defendant, which had also been served on the defendant at the Waterman Road address, on the ground it did not appear service had been correctly accomplished. The court noted that according to the docket in this adversary proceeding, on two separate occasions, an envelope addressed to the defendant at the Waterman Road address had been returned to the court as undeliverable.

The court added that it had discovered that an individual named Vinesh Chand had filed, in another adversary proceeding in this case, Adv. No. 10-2573, a Change of Address listing the Waterman Road address as his old address, as of November 18, 2011, with his new address being on Silverdale Court in Sacramento. The trustee did not file his complaint commencing this adversary proceeding until August 6, 2012. By that time, the defendant had, according to the Change of Address, moved from the Waterman Road address.

In a status conference statement filed May 8, 2014, the trustee stated: "Plaintiff served a motion for default on Defendant. However, the Court raised concerns about service. Plaintiff has been unable to find a more recent address for defendant to serve him with the documents but is continuing efforts." Plaintiff's Status Conference Statement, DN 62, p. 15. As indicated above, the court's ruling on the trustee's motion for entry of a default judgment referred to the defendant's Change of Address filed in Adv. No. 10-2573, listing the Silverdale Court address as his new address. However, the trustee did not serve the defendant at that address, instead continuing to use the Waterman Road address listed in the Change of Address as the defendant's old address.

In support of the present motion, the trustee's attorney testifies: "The address at which Defendant was served was 8155 Waterman Rd. 1523, Sacramento, CA 95829, which is the address used by Defendant in his proof of claim and in an adversary proceeding filed by him against Debtor Vincent Singh. This is the address

Plaintiff has used for all notices and mailed communications to Defendant." Declaration of Christopher Hughes, DN 102, at 2:24-28. It is accurate that the Waterman Road address was used by the defendant in his adversary proceeding against Vincent Singh, Adv. No. 10-2573 that was the address he used on his complaint, filed September 16, 2010. However, he filed a Change of Address in November of 2011 indicating he had moved from the Waterman Road address to the Silverdale Court address.

As indicated above, the court's docket in this adversary proceeding indicates an envelope addressed to the defendant at the Waterman Road address (the court's entry of default) was returned as undeliverable in December of 2012. Now, two and one-half years later, the trustee continues to use that address. As it appears the defendant has never been properly served in this adversary proceeding, it appears the adversary proceeding should be dismissed pursuant to Fed. R. Civ. P. 4(m), incorporated herein by Fed. R. Bankr. P. 7004(a)(1) (requiring service within 120 days).

The court will hear the matter.

19. 15-27158-D-7 WHITNEY ANGEL
LBG-1

MOTION TO COMPEL ABANDONMENT
11-5-15 [15]

20. 15-27259-D-7 KATHERINE KLUSKY
SMR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-10-15 [9]

RNM INVESTMENTS, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is RNM Investments, Inc.'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 the creditor foreclosed on the property pre-petition and, thus, the debtor's only interest in the property is possessory. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay and will waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

21. 15-28060-D-11 ACADEMY OF PERSONALIZED LEARNING, INC.
STATUS CONFERENCE RE: VOLUNTARY PETITION
10-15-15 [1]

Final ruling:

The hearing on this motion was continued by order to January 13, 2016 at 10:00 a.m. No appearance is necessary.

22. 14-26862-D-7 DMW-6 VLADIMIR/YELENA TIMCHUK
MOTION FOR TURNOVER OF PROPERTY
11-6-15 [70]

Tentative ruling:

This is the trustee's motion for an order requiring Stewart Title to turn over to him certain earnest monies held in escrow on account of a cancelled purchase and sale agreement. The motion was served pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court is concerned that the debtors' attorney was served at an address that is different from her address as listed on the petition and on the State Bar's website. In the absence of an appearance by the debtors' attorney, the court will continue the hearing and require the trustee to file a notice of continued hearing and serve it, together with the motion and supporting declaration and exhibits, on the debtors' attorney at her address of record in this case.

The court will hear the matter.

23. 14-20064-D-7 WR-3 GLENN GREGO
AMENDED OBJECTION TO CLAIM OF PG&E, CLAIM NUMBER 3
10-19-15 [540]

Final ruling:

This is the debtor's purported "amended" objection to the claim of Pacific Gas & Electric Company, Claim No. 3. The objection was originally filed August 17, 2015 and noticed for hearing on September 23, 2015. The objection was overruled by final ruling for a variety of notice and other procedural defects. A minute order overruling the objection was filed September 24, 2015. On October 19, 2015, the debtor filed an "amended" objection to the claim. He did not file a notice of hearing. On the "amended" objection, the debtor utilized the docket control number WR-40 rather than a new docket control number, as required by LBR 9014-1(c)(3). (WR-40 was the docket control number on the debtor's declaration filed in support of the original objection. The objection was overruled because, among other reasons, the debtor had utilized different docket control numbers for the objection, notice, and declarations.)

Because the objection had already been overruled, there was, on October 19, 2015, no objection pending for the debtor to "amend." Thus, this matter will be removed from calendar. No appearance is necessary.

24. 14-20064-D-7 GLENN GREGO
WR-71

OBJECTION TO CLAIM OF SOUTH LAKE TAHOE PUBLIC UTILITY DISTRICT, CLAIM NUMBER 9
10-15-15 [525]

Final ruling:

This is the debtor's objection to the claim of South Lake Tahoe Public Utility District (the "Claimant"), Claim No. 9. On November 19, 2015, the Claimant filed an amended proof of claim. As a result of the filing of the amended proof of claim, the objection is moot. The court notes there is no evidence the notice of hearing was served on the Claimant. The debtor filed separate proofs of service of (1) the objection and supporting declaration, and (2) the notice of hearing. The Claimant's name and address appear on the service list attached to the former, but do not appear on the service list attached to the latter. (The last line of the service list, which includes the Claimant's name and address, has been deleted from the service list attached to the proof of service of the notice of hearing.)

The objection will be overruled as moot by minute order. No appearance is necessary.

25. 14-20064-D-7 GLENN GREGO
WR-72

OBJECTION TO CLAIM OF LIAD GROSS, CLAIM NUMBER 10
10-15-15 [528]

Tentative ruling:

This is the debtor's objection to the claim of Liad Gross (the "claimant"), Claim No. 10. The chapter 7 trustee has filed opposition. For the following reasons, the objection will be overruled.

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

The claimant was a tenant in an apartment managed by the debtor between 2012 and 2014. The claimant's proof of claim, which was signed and filed by the trustee pursuant to Fed. R. Bankr. P. 3004, is for the recovery of a $925 security deposit. In support of his objection, the debtor testifies that "[n]o part of that deposit was refundable to the claimant, given the condition that she left the apartment in." He states he had to replace the electric range, clean the carpeting, paint the interior, replace screens and blinds, and do general clean-up, all of which amounted to more than the amount of the security deposit.[1]

In response, the trustee has filed his own declaration and declarations of (1) the claimant and her co-tenant in the apartment, (2) one of the two tenants who moved into the apartment when the claimant and her roommate moved out, and (3) the claimant's two next-door neighbors. The claimant and her roommate testify they reported to the debtor that the oven stopped working about a month before they moved out; that the debtor said he would get a replacement oven but did not do so until

after they had moved out; that they had to use their neighbors' oven for the last month of their tenancy; that the debtor told them after they had moved out he would send them a check for the full amount of their security deposit, but did not; that the debtor did not do a move-out inspection when they left; and that they did not receive an accounting of the deductions from their security deposit within 21 days after they left, as required by Cal. Civ. Code § 1950.5(g).

The tenant who moved into the apartment when the claimant and her roommate moved out testifies he loaned them his professional carpet cleaning machine which the claimant used to clean her carpets just before she moved out; that when the debtor called and asked him to measure the oven, he responded that the oven could be repaired by simply replacing the heating element and he offered to do the labor for free, but the debtor bought a new oven instead; that the debtor did not inspect the property but told the new tenant to notify him of any damages and he would deduct the amount from the claimant's security deposit; that he did not contact the debtor with any complaints; and that the debtor's testimony that he replaced screens and blinds in the apartment and cleaned the carpet is false. The claimant's next-door neighbors testify they were present when the claimant and her roommate moved into the apartment and when they moved out. The neighbors state the carpet was old and worn when the claimant and her roommate moved in but that they cleaned it with a professional carpet cleaner before moving out; that the carpet was at least as clean at that time as when they moved in; and that the neighbors observed the claimant and her roommate painting the walls in the living room, kitchen, and staircase before they moved out. They also testify they allowed the claimant and her roommate to use their oven, as theirs had stopped working.

The court finds the trustee's evidence considerably more convincing than the debtor's, not because of the number of declarations versus the debtor's single one, but because the trustee's witnesses' declarations are more specific and because several individuals, all but one with no dog in the fight, testify to similar facts, facts that are directly contrary to the debtor's testimony. It is also significant that the debtor testifies he was managing the apartment for the Oscar Grego Trust, whereas the lease agreement, a copy of which is attached to the proof of claim, names the debtor, not the trust, as the landlord and is signed by the debtor as the landlord, not on behalf of the trust. Further, the Move In Deposit Receipt, signed by the debtor (not on behalf of the trust), is addressed "To:" the claimant and her roommate, as tenants, "From: Glenn O. Grego, Landlord/Owner." According to the receipt for the new range, the debtor purchased it in October of 2014, ten months after he filed this bankruptcy case. Thus, the debtor apparently collected rent from the claimant and her roommate well into the bankruptcy case, whereas the apartment and the rents from it were, according to the deposit receipt the debtor signed and had apparently prepared, property of the debtor at the time the bankruptcy case was filed, and therefore, property of the bankruptcy estate from the date the case was filed. The trustee testifies the debtor did not account for the security deposit in his bankruptcy, and the court has confirmed the debtor listed no security deposits on his bankruptcy schedules.

To conclude, the court finds the trustee's evidence to be the more credible. Accordingly, the claimant is entitled to a claim for the security deposit, and the objection will be overruled.[2] The court will hear the matter.

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1 The debtor has attached and authenticated a copy of his receipt for the purchase of the range, which cost $471.

2 As an aside, the court must add that, in light of the trustee's duty to maximize funds for the estate and for creditors as a whole, it is striking and disconcerting that so much energy has gone into defending against an objection to a single claim, particularly where the amount of the claim is so disproportionate to the amount, in terms of fees, likely incurred in preparing the opposition. This issue is not relevant to the objection, but the court considers it appropriate to point out.

26.	14-20064-D-7 WR-73	GLENN GREGO	OBJECTION TO CLAIM OF SOUTH LAKE TAHOE REFUSE COMPANY, CLAIM NUMBER 11 10-15-15 [531]**Final ruling:**

This is the debtor's objection to the claim of South Lake Tahoe Refuse Company (the "Claimant"), Claim No. 11. On November 11, 2015, the Claimant filed an amended proof of claim. As a result of the filing of the amended proof of claim, the objection is moot. The court notes there is no evidence the notice of hearing was served on the Claimant. The debtor filed separate proofs of service of (1) the objection and supporting declaration, and (2) the notice of hearing. The Claimant's name and address appear on the service list attached to the former, but do not appear on the service list attached to the latter. (The last line of the service list, which includes the Claimant's name and address, has been deleted from the service list attached to the proof of service of the notice of hearing.)

The objection will be overruled as moot by minute order. No appearance is necessary.

27.	15-27967-D-7 UST-1	WILLA RHODES	MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A) 11-3-15 [14]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for denial of discharge of debtor under 11 U.S.C. § 7277(A) is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

28.	14-23368-D-7 JWR-1	JESSE M. LANGE DISTRIBUTOR, INC.	MOTION FOR COMPENSATION FOR JOHN W. REGER, CHAPTER 7 TRUSTEE 10-19-15 [124]

Tentative ruling:

This is the trustee's motion for a first and final allowance of compensation in this case. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court has a concern about service of the motion. The moving party failed to serve roughly half the creditors who have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g), and failed to serve at least two of them at all. As a result of this service defect, the court intends to continue the hearing to allow the moving party to file a notice of continued hearing and serve it on the parties not previously served or not previously served correctly.

The court will hear the matter.

29. 15-27375-D-7 JAMAL SHEHADEH — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-6-15 [21]

30. 10-36676-D-7 TAA-4 SUNDANCE SELF-STORAGE-EL DORADO LP — MOTION FOR ADMINISTRATIVE EXPENSES
10-29-15 [587]

Final ruling:

The hearing on this motion has been continued to December 23, 2015 by an amended notice of hearing filed by the moving party on November 18, 2015. No appearance is necessary on December 9, 2015.

31. 15-27284-D-11 CONSOLIDATED RELIANCE, INC. — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-16-15 [1]

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

32. 15-27284-D-11 FWP-1 CONSOLIDATED RELIANCE, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-4-15 [76]

CAN CAPITAL VS.

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

33. 15-91087-D-11 SPYGLASS EQUITIES, INC. STATUS CONFERENCE RE: VOLUNTARY PETITION
11-10-15 [1]

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

34. 15-26789-D-7 BRIAN/TINA MCCURDY MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-1 11-9-15 [15]

U.S. BANK, N.A. VS.

Final ruling:

The hearing on this motion has been continued to December 23, 2015 at 10:00 a.m. by a stipulated order. No appearance is necessary on December 9, 2015.

35. 15-25795-D-7 EVANGELINA HERNANDEZ CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
DJD-1 10-12-15 [13]

SETERUS, INC. VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor received her discharge on November 24, 2015 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court finds a hearing is not necessary as to the trustee because the trustee has filed a Report of No Assets and will grant relief from stay as to the trustee and the estate by minute order. There will be no further relief afforded. No appearance is necessary.

36. 15-20096-D-7 DAVID KUMAR MOTION TO SUBSTITUTE ATTORNEY
15-2051 CAH-2 11-13-15 [44]
ESIO V. KUMAR

37. 15-22196-D-7 WILFORD/BARBARA PROSCH — MOTION FOR RELIEF FROM AUTOMATIC STAY
MET-1 — 11-10-15 [43]

U.S. BANK, N.A. VS.

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on June 29, 2015 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

38. 15-27598-D-7 TERRI MITCHELL — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
PPR-1 — 11-2-15 [14]

THE BANK OF NEW YORK MELLON
VS.

Final ruling:

This matter is resolved without oral argument. This is The Bank of New York Mellon'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.

39. 15-26922-D-7 CHRISTOPHER/MANDY ALLGOOD — TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
KJH-1 — 11-9-15 [18]

Tentative ruling:

This is the trustee's motion to dismiss this chapter 7 case for failure to appear at the meeting of creditors. The record indicates that both debtors appeared at the October 26, 2015 session of the meeting; the record is unclear as to who appeared at the November 9, 2015 session. The docket contains two reports of the trustee of the November 9 meeting. The first report indicates the debtor appeared but the joint debtor did not. The second report indicates neither one appeared. The trustee's motion to dismiss, DN 18, indicates neither one appeared, but the notice of trustee's motion, DN 19, indicates that only the joint debtor failed to appear. Thus, the court finds that notice of the trustee's motion was directed only to the joint debtor, Mandy Michelle Allgood, and the motion does not pertain to the debtor, Christopher Lee Allgood.

According to the declaration of the debtors' attorney, filed in opposition to the motion, the joint debtor appeared at the meeting held October 26, 2015, but did

not have proof of her social security number. The debtors' attorney states he has emailed and spoken with the joint debtor several times and that she indicated she had obtained a replacement social security card and intended to appear at the continued meeting of creditors on November 23. However, according to the trustee's report of that meeting, the joint debtor did not appear. The meeting has again been continued, this time to December 21.

The court will allow the joint debtor one last opportunity to present proof of her social security number. If she does not appear at the meeting of creditors on December 21 or does not present proof of her social security number at that meeting, the case will be dismissed as to the joint debtor without further notice. If the joint debtor does appear on December 21 and presents such proof, the case will remain open as to the joint debtor and the deadline for parties-in-interest to file actions as against the joint debtor under §§ 523, 707(b), and 727 will be extended to February 19, 2016, which is 60 days after December 21, 2015. The court will issue an order from chambers.

The court will hear the matter.

40. 14-31725-D-11 TAHOE STATION, INC.
FWP-10

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

DEBTOR DISMISSED: 10/29/2015

41. 14-31725-D-11 TAHOE STATION, INC.
FWP-13

CONTINUED MOTION FOR COMPENSATION FOR CONVENIENCE MANAGEMENT SERVICES, INC., OTHER PROFESSIONAL(S)
10-28-15 [274]

DEBTOR DISMISSED: 10/29/2015

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

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

DEBTOR DISMISSED: 10/29/2015

43. 15-23746-D-7 GORDON BONES
15-2160 BLF-1
MELISSA JOSEPH, AS TRUSTEE OF THE RICHARD W. DE SI V. BONES

MOTION TO MODIFY PRELIMINARY PRETRIAL SCHEDULING ORDER AND/OR MOTION FOR CONSOLIDATION OF STAYED SACRAMENTO SUPERIOR COURT CLAIMS , MOTION FOR JOINDER OF SUSAN VON HERMANN 11-18-15 [31]

Tentative ruling:

This is the defendant's motion to (1) modify the pretrial scheduling order in this adversary proceeding; (2) consolidate a pending state court action with this adversary proceeding; and (3) join a third party, Susan von Herrmann, as a party. The plaintiffs have filed opposition. For the following reasons, the motion will be granted in part and denied in part.

The plaintiffs are two of the beneficiaries of a family living trust, the trustor of which was represented at times during the estate planning process by the defendant, who is an attorney. In their complaint in this adversary proceeding, the plaintiffs allege the defendant committed legal malpractice in connection with a trust challenge in state court, falsely inflated fees for his legal services, and filed and recorded a UCC-1 financing statement falsely claiming a security interest in certain real properties belonging to the trust or the trustor. The defendant has filed a motion to dismiss the complaint, Item 14 on this calendar, which the court intends to deny without prejudice. The court also intends to lift the automatic stay to permit the parties to return to state court to litigate an action brought there by the plaintiffs against the defendant prior to the filing of his bankruptcy case, and to stay this adversary proceeding pending the outcome of the state court action.

By this motion, the defendant seeks to consolidate with this adversary proceeding another state court action – one brought by him against the plaintiffs and others to recover attorney's fees. (The defendant's claim for attorney's fees has recently been deemed abandoned by this court.) The defendant contends the two actions – his action for fees and this adversary proceeding – are "at least nearly identical if not identical" and that consolidation is "in the interest of efficient court administration." The plaintiffs contend in response that the applicable rule [1] **permits consolidation of federal court actions only, not of a state court case with a federal court case, and that the cases involve different parties and different issues.**

The court will deny the request for consolidation for another reason – lack of jurisdiction. "Federal courts are always 'under an independent obligation to examine their own jurisdiction,' . . . and a federal court may not entertain an action over which it has no jurisdiction." Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000), citing FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) and Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982). See also Fed. R. Civ. P. 12(h)(3), incorporated herein by Fed. R. Bankr. P. 7012(b) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

This court, by reference from the district court, has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §§ 1334(b), 157(a). The defendant's attorney's fee claims do not "arise under" title 11 because they do not "'involve a cause of action created or determined by a statutory provision of title 11.'" See Harris v. Wittman (In re

Harris), 590 F.3d 730, 737 (9th Cir. 2009). Further, the claims do not "arise in" a case under title 11. "'[A]rising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.'" Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435 (9th Cir. 1995).

Finally, this court does not have "related to" jurisdiction of these claims because, the claims having been abandoned by the bankruptcy estate, the outcome of the claims could not conceivably have any effect on an estate being administered in bankruptcy. See In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). Obviously, the outcome of the claims will have an effect on the defendant and, to the extent he prevails in whole or in part, the outcome may operate to offset the amount, if any, the defendant is ultimately determined to owe the plaintiffs. This circumstance is an additional reason this court should lift the automatic stay to permit the parties to litigate in state court the underlying factual allegations involved in the plaintiffs' claims against the defendant.

So is the fact that the defendant seeks to bring another attorney, Susan von Herrmann, into the fray. He contends in his motion to dismiss, Item 14 on this calendar, that it was Ms. von Herrmann's conduct, not the defendant's, that caused the plaintiffs' damages. As with the defendant's claims for attorney's fees, any claims of either the plaintiffs or the defendant against Ms. von Herrmann neither "arise under" the Bankruptcy Code, "arise in" a case under the Bankruptcy Code, nor are "related to" a case under the Bankruptcy Code, the latter for the simple reason that the claims are not property of the bankruptcy estate and can have no impact upon the bankruptcy estate. Accordingly, this court has no jurisdiction to consider the attorney's fee claims or the claims against Ms. von Herrmann, and to the extent the motion seeks to consolidate the state court action with the adversary proceeding and to join Ms. von Herrmann as a party, the motion will be denied.

Finally, the defendant requests that the court modify its scheduling order, filed October 30, 2015 (DN 18), to the extent of extending the deadline to amend pleadings from December 14, 2015 to February 13, 2016. The defendant's concern is his time to file "all types of pleadings including cross-claims, cross-complaints, and the joinder of other parties." Because the court intends to stay this adversary proceeding while the parties proceed in state court, the court will grant the motion to the extent of modifying the scheduling order by vacating it entirely. Either party may set the matter for a status conference once the state court action is resolved. The court declines the plaintiffs' suggestion that the court sua sponte impose sanctions against the defendant under Rule 11.[2]

The court will hear the matter.

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1 The parties cite Fed. R. Civ. P. 42(a); the applicable rule in this adversary proceeding is Fed. R. Bankr. P. 7042, incorporating the rule of civil procedure.

2 Again, counsel has cited the rule of civil procedure, whereas the applicable rule here is Fed. R. Bankr. P. 9011.

44. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2417
BURKART V. PRASAD
ADV. CASE CLOSED: 05/27/2015

MOTION TO REOPEN ADVERSARY PROCEEDING AND VACATE DISMISAL
11-13-15 [128]

Tentative ruling:

This is the motion of defendant Kishore Prasad to reopen this case and vacate dismissal. The plaintiff, who is the trustee in the underlying chapter 7 case (the "trustee"), has filed opposition. For the following reasons, the motion will be granted.

A. The Motion to Reopen and Vacate

The defendant's characterization of the relief he seeks is inaccurate, likely because he is representing himself in pro se. What he actually wants is to reopen this adversary proceeding and vacate the judgment previously entered against him. The trustee has had no trouble understanding what is really being requested, and the court has no trouble construing the motion as one seeking the outcomes the defendant actually wants. Thus, the court will reopen the adversary proceeding. The trustee's argument that the defendant has failed to cite appropriate legal authority for this procedure is rejected. The court will also construe the motion as a motion for relief from judgment under Fed. R. Civ. P. 60(b)(6) ("for any other reason that justifies relief"), incorporated herein by Fed. R. Bankr. P. 9024.

The trustee's procedural arguments – that the motion was filed less than 28 days prior to the hearing (it was filed 26 days prior and, according to the proof of service, it was served 30 days prior), that it was served only on the trustee and not his attorney, and that the notice does not comport with LBR 9014-1(c) (docket control number) and (d)(3) (notice of hearing must state docket control number, location of courthouse, and name of judge) – are rejected. The trustee's suggestion that the motion appears to have been ghostwritten, which the trustee states is disfavored by courts when done by an attorney and "probably illegal if it is being done by a non-attorney,"[1] is not helpful.

This adversary proceeding is one of a large group of similar proceedings brought by the trustee against defendants who were investors in a Ponzi scheme run by the debtor in the underlying chapter 7 case, Vincent Singh, before he filed his bankruptcy case. In the adversary proceedings, the trustee seeks to avoid as fraudulent transfers the payments Singh made to the defendants in order to keep the scheme going.

The procedural history of this adversary proceeding, together with others filed by the trustee against similarly-situated defendants, counsels in favor of vacating the judgment against the defendant. On March 18, 2015, the trustee filed an initial round of motions for summary judgment in a group of adversary proceedings, including this one, which he set for hearing on April 15, 2015. The defendant in this particular proceeding filed a request for additional time to file opposition. The request was granted and the hearing was continued. The defendant filed opposition, the trustee filed a reply, and the court heard oral argument and granted the motion. A judgment was then entered in the trustee's favor against the defendant for $49,200, and in addition, the defendant's claim against the estate was disallowed under § 502(d) of the Bankruptcy Code.

In granting the trustee's motion, the court relied heavily on basic summary judgment law to the effect that once the moving party has met his burden of proof, the opposing party must come forward with evidence sufficient to demonstrate the existence of genuine issues of material fact that should be tried. Here, the court found that, although the defendant asserted a "good faith and for value" defense under § 548(c), he had failed to submit admissible evidence other than a declaration in which he testified he had made good faith investments into the Ponzi scheme and had invested more into the scheme than he had received back, such that he was a "net loser." The court concluded that those statements were too conclusory to demonstrate the existence of genuine issues of material fact for trial; therefore, the court granted the motion.[2]

A few weeks after the court granted the trustee's motion for summary judgment, the court held pretrial conferences in a large number of the trustee's adversary proceedings at which the court heard from many of the defendants who, like the defendant here, were representing themselves in pro se. The court permitted the defendants to tell the court of the circumstances that had befallen them as a result of their investments in the Ponzi scheme. Those defendants' remarks made the court acutely aware of the tragic nature of the financial, and in many cases social and family, consequences of the defendants' investments.

In light of those remarks, the court determined that for pro se defendants who responded to the trustee's motions for summary judgment and asserted an affirmative defense, the court would not grant judgment in the trustee's favor. Instead, the court would grant partial summary adjudication and determine, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, based on the trustee's evidence and the defendants' lack of contrary evidence or even of contrary persuasive argument, that it is not genuinely in dispute and will be treated as established that the payments made to the defendants were made in furtherance of the Ponzi scheme and with the actual intent to hinder, delay, or defraud creditors. The court determined it would not consider affirmative defenses in the context of a summary judgment motion but only at trial. The court has followed this approach in resolving the trustee's subsequent rounds of summary judgment motions.

The defendant in this adversary proceeding did precisely what the court has come to require in subsequent rounds of motions – on April 15, 2015, which was his deadline under the order extending time, the defendant filed an opposition asserting a "good faith and for value" defense.[3] It would simply be unfair to deprive this defendant of his day in court on that defense while allowing other similarly-situated defendants who, in response to summary judgment motions, offered no better evidence than did this defendant, to have their day in court. Thus, the court will grant the motion and vacate the judgment against the defendant, the order granting the trustee's motion for summary judgment, and the final ruling on that motion. The trustee's motion for summary judgment having been fully briefed, the court will also issue an amended ruling on that motion, which will read as follows.

B. The Motion for Summary Judgment

This is the motion of the plaintiff in this adversary proceeding, who is the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment in favor of the trustee and against the defendant, Kishore Prasad (the "defendant"), in the amount of $49,200. The defendant, in propria persona, has filed opposition and the trustee has filed a reply. For the following reasons, the motion will be

granted in part.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison, 134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569.

Here, the defendant was required by an earlier court order to file a motion to withdraw the reference by a certain date or be deemed to have consented to this court's jurisdiction to enter findings of fact, conclusions of law, and final judgment in all causes of action in this adversary proceeding. The defendant filed a motion to withdraw the reference by the deadline. The motion to withdraw the reference was denied by order of the district court dated March 6, 2015. Thus, the defendant's request to have the matter adjudicated by an Article III court has been denied. In addition, the defendant filed a proof of claim in the chapter 7 case in which this adversary proceeding is pending. In doing so, the defendant waived the right to an Article III adjudication, and the court has authority to enter a final judgment in this adversary proceeding.

In considering a motion for summary judgment, the court looks beyond the pleadings and considers the materials in the record, including depositions, documents, declarations, discovery responses, and so on. Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). The moving party bears the burden of producing evidence showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Celotex v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986). Once the moving party has met its initial burden, the non-moving party must present affirmative evidence showing the existence of genuine issues of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

By this motion, the trustee asks the court to determine that the payments made by the debtor in the underlying chapter 7 case, Vincent Singh (the "debtor" or "Singh"), to the defendant between August 19, 2008 and August 19, 2010, a total of $49,200, are avoided as actual fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code and Cal. Civ. Code § 3439.04(a)(1). Thus, he seeks a judgment against the defendant in the amount of $49,200, and also asks the court to disallow the defendant's claim filed in the underlying case, Claim No. 90, pursuant to § 502(d), unless the defendant pays the estate the amount of the avoided transfers. The defendant has asserted an affirmative defense of "good faith and for value"; thus, a monetary judgment in the trustee's favor is not appropriate at this time nor is a judgment disallowing the claim. The court finds it appropriate, however, to enter partial summary adjudication, pursuant to Fed. R. Civ. P. 56(g), incorporated herein by Fed. R. Bankr. P. 7054,[4] as set forth below.

In support of the motion, the trustee has submitted (1) a declaration of his attorney, Christopher Hughes; (2) a declaration of his expert witness, Gerard A. McHale, Jr.; and (3) exhibits consisting of (a) Mr. McHale's expert report; (b) a summary list of the payments the trustee contends were made by the debtor to the

defendant; (c) copies of the front and back sides of checks payable to the defendant on accounts of the debtor, one of his companies, or John and Om L. Singh; and (d) a copy of a set of Requests for Admissions which the trustee's counsel testifies were served on the defendant and which he also testifies the defendant has not responded to. The court will begin with the evidence of a Ponzi scheme.

Mr. McHale testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "[a]ll payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. In addition, the court has been made aware earlier in this litigation that the debtor, Vincent Singh, has pled guilty in federal court to wire fraud in connection with his operation of the Ponzi scheme. The court takes judicial notice of the debtor's guilty plea and plea agreement [5] as conclusive evidence that the debtor was operating a Ponzi scheme and conclusive evidence of the debtor's fraudulent intent under Bankruptcy Code 548(a)(1)(A) and California Civil Code § 3439.04(a)(1).[6] The defendant does not dispute that Singh was running a Ponzi scheme during the period in which the payments to the defendant were made. He also does not dispute that the payments to the defendants, including him, were made in furtherance of the Ponzi scheme.

As to the amount of the payments that were made to the defendant, the trustee alleges and the defendant does not dispute that the payments totaled at least $49,200. Thus, the court will grant summary adjudication in favor of the trustee and against the defendant to the extent of determining, pursuant to Fed. R. Civ. P. 7056(g), incorporated herein by Fed. R. Bankr. P. 7056, that it is not genuinely in dispute and will be treated as established in this adversary proceeding that Vincent Singh was running a Ponzi scheme with the requisite fraudulent intent to hinder, delay, or defraud creditors and that payments made to the defendant in the total amount of $49,200 were made in furtherance of the Ponzi scheme.

The defendant claims to have made investments with Singh totaling much more than $49,200, such that the defendant was a "net loser." That contention pertains to the affirmative defense that the defendant took his payments "for value"; as to that component of the "good faith and for value" defense, as well as the good faith component, the defendant will have an opportunity to present admissible evidence at trial.[7] However, as to the "for value" component, it is not a foregone conclusion that a trial will be necessary. The court has made clear in connection with other adversary proceedings in this case, and reiterates in this ruling, that in cases where the defendants make a sufficient showing of good faith at trial and where they also demonstrate they took their payments for value, the court will award judgment for the trustee only to the extent the defendants were "net winners"; that is, only in the amount by which the total of their recoveries from Singh exceeded the total of their investments. Thus, the court strongly encourages the parties to work together to determine whether the issue of the amount the defendant invested can be resolved in whole or in part prior to the trial.

The court recognizes that if the defendant cannot establish the "good faith" component of his defense at trial, the trustee would be able to recover all payments to the defendant regardless of whether the defendant was a net winner or a net loser. It appears the trustee contends the defendants in all, or at least most, of these adversary proceedings will not be able to establish that they took their payments from Singh in good faith, in which case the "for value" component of the defense would become moot. However, as a matter of judicial economy, in the event

one or more defendants prevail on the good faith component of the defense, the court would expect the parties to have made a sincere effort to iron out disputes about the "for value" component prior to trial.

For the reasons stated above, the motion will be granted in part. The trustee is to submit an appropriate order.

C. Conclusion

The court will grant the defendant's motion, reopen this adversary proceeding, and vacate the judgment against the defendant, DN 122, the order granting the trustee's motion for summary judgment, DN 124, and the final ruling on that motion, in the court's minutes at DN 121. The court will issue an amended ruling on the trustee's motion for summary judgment, as set forth above.

The court will hear the matter.

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1 The trustee cites Cal. Bus. & Prof. Code § 6125, which prohibits the practice of law by one who is not an active member of the State Bar.

2 Looking back, the court is not certain the motion should have been granted, even without considering the approach the court has taken in other adversary proceedings since that time (see discussion below). The defendant's opposition, although filed timely in accordance with the order extending time, on April 15, 2015, was not entered on the court's docket until April 28, 2015, the day before the hearing. In the interim, the defendant filed an amended opposition, on April 22, 2015, and that is the one the court considered at the time. With the original opposition, but not the amended one, the defendant had submitted as an exhibit a copy of a cashier's check (both the front and back sides) showing himself as purchaser and an entity named US Steel Rule Dies Inc. as the payee. The defendant testified in his opposing declaration that the exhibit was "a copy of a check used to invest in the Singh Ponzi scheme." The amount of the check, $100,000, was double the amount the trustee was seeking to recover and well over the total amount of payments the defendant received back on his investments, according to the trustee. Thus, that check, assuming it represented an investment in the Ponzi scheme, would have rendered the defendant a net loser.

As the court has not heard the name US Steel Rule Dies Inc. in connection with this case, the court might not have found this evidence sufficient to prove the check represented an investment in the Ponzi scheme. However, the court likely would have found that the defendant, who at least purported to authenticate the check as such by sworn declaration, had done enough to defeat a summary judgment motion, at least as to the "for value" portion of the "good faith and for value" defense.

3 For unknown reasons, the defendant's opposition was not entered on the court's docket until April 28, 2015, the day before the hearing. However, it bears a "Filed" stamp dated April 15, 2015 and reflects that date across the top as the date it was filed. The trustee acknowledged in his reply that he had received the opposition.

4 "If the court does not grant all the relief requested by the motion, it may

enter an order stating any material fact–including an item of damages or other relief–that is not genuinely in dispute and treating the fact as established in the case." Fed. R. Civ. P. 56(g).

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

6 See Santa Barbara Capital Mgmt. v. Neilson (In re Slatkin), 525 F.3d 805, 812 (9th Cir. 2008), see also Donell v. Kowell, 533 F.3d 762, 770 (9th Cir. 2008); AFI Holding, Inc. v. Mackenzie, 525 F.3d 700, 704 (9th Cir. 2008); La Bella v. Bains, 2012 U.S. Dist. LEXIS 76502, *10-12, 2012 WL 1976972, *4 (S.D. Cal. 2012).

7 The court recognizes the defendant is in propria persona. The defendant will, however, be held to the same procedural rules and rules of evidence as litigants who are represented by counsel.

45.	15-27259-D-7 SMR-2	KATHERINE KLUSKY	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-23-15 [18]
	RNM INVESTMENTS, INC. VS.		
46.	12-40862-D-7 HLG-3	ALEJANDRO VEGA	MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB 11-17-15 [27]
47.	15-27284-D-11 NII-1	CONSOLIDATED RELIANCE, INC.	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-20-15 [106]
	ANCHOR FUND, LLC VS.		

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

48.	15-27284-D-11 RMY-3	CONSOLIDATED RELIANCE, INC.	MOTION FOR JOINT ADMINISTRATION AND/OR MOTION FOR APPROVAL TO USE JOINT CAPTIONS FOR MOTIONS AND PLEADINGS FILED IN RELATD CHAPTER 11 CASES 11-23-15 [115]

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

Tentative ruling:

This is the motion of debtor Consolidated Reliance, Inc. ("Consolidated") for an order approving joint administration of this case and the case of Spyglass Equities, Inc. ("Spyglass"), Case No. 15-91087, for procedural purposes only, or in the alternative, for approval to use joint captions for motions and pleadings filed in the two cases. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The motion is brought pursuant to Fed. R. Bankr. P. 1015(b), under which the court may order the joint administration of the bankruptcy estates of a debtor and an affiliate after giving consideration to protecting creditors of different estates against potential conflicts of interest. In general, this court does not look favorably on such motions because "joint administration" is a term that is undefined by the Bankruptcy Code and poorly defined in bankruptcy law, and in the court's experience, joint administration simply leads to confusion, especially in today's age of electronic docketing.[1] In the court's experience, the downside of joint administration usually outweighs its benefits, and the court finds no reason to depart from this general rule here.

The motion focuses on the fact that Spyglass is wholly owned by Consolidated; that the two companies have similar business models and are operated by the same two men; that each has transferred monies to or for the benefit of the other since 2014, which "appear to be" equity contributions in the case of the transfers by Consolidated to Spyglass and dividends in the case of the transfers by Spyglass to Consolidated; and that the debtors expect to file "several" notices, applications, motions, orders, and other pleadings in the two cases, which "could result" in numerous duplicative pleadings being filed and served on separate service lists. Despite the speculative nature of possible duplication of pleadings in the two cases, the debtor wants the clerk's office to maintain a single docket for both cases and to combine notices to creditors and other parties-in-interest. (The debtor would allow for proofs of claim to be filed in each case and would file its own separate monthly operating reports, "unless the U.S. Trustee agrees to some other requirement.")

The possibility of duplication of pleadings is not sufficient to warrant joint administration of these cases. The two debtors' assets are completely different. The debtors have some creditors in common but each also has a significant number of creditors who are not creditors of the other. There are wide differences between the totals of the debtors' respective secured debts, priority unsecured debts, and general unsecured debts. It is highly unlikely that the debtors will be filing

identical plans and disclosure statements. Further, it is far from clear that all the motions, applications, and so on, filed by the two debtors in the exercise of their respective fiduciary duties as debtors-in-possession will be identical or even substantially similar, such that a single docket would be appropriate. The debtor has not addressed the propriety of a single docket for motions and applications that may be filed by creditors and the confusion it would likely cause appears to outweigh the marginal benefit. Finally, given the apparently significant transfers between the two debtors in the past couple of years, transfers which, the court notes, were not disclosed in their respective statements of financial affairs, the court finds that there are significant potential conflicts of interest between them and that joint administration of the cases would likely tend to obscure those potential conflicts.[2]

For the reasons stated, the motion will be denied except as follows:

(1) When an identical motion or other document is filed in both cases, the moving party or other party-in-interest filing the document, or documents, may use a joint caption. The motion or other document, however, shall be filed separately in each case.

(2) When an identical request for relief is filed in both cases, a single notice containing a joint caption may be served on all parties entitled to notice. The notice and proof of service, however, shall be filed in each case.

(3) When an identical document is filed in the two cases, the document shall highlight, or otherwise designate, in which case it is being filed. Also, where applicable, a single docket control number shall be used on each document, in compliance with LBR 9014-1(c).

The court will hear the matter.

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1 It appears the debtor itself is not entirely clear on what it means by "joint administration." In the title of its motion, the debtor refers to joint administration of the chapter 11 proceedings, whereas in the text, it refers to an order "administratively consolidating" the two cases "for procedural purposes only" and to "jointly administer[ing] and consolidat[ing]" the two cases for procedural purposes only. Indeed, the debtor requests that an entry be made on the court's docket in the Spyglass case, but not in the Consolidated case, that "[a]n order has been entered in this case directing the procedural consolidation and joint administration" of the two cases. In other words, the debtor appears to use the terms administration and consolidation interchangeably, whereas they are distinct concepts in bankruptcy law.

2 The debtors' counsel's motion for approval of his employment in the Spyglass case is set for hearing on December 23, 2015. (His employment has been approved in the Consolidated case.) However, it appears that this motion for joint administration, with its disclosure of significant transfers of monies back and forth between the two debtors without a proper accounting, facially precludes counsel from representing both debtors.

49. 15-91087-D-11 SPYGLASS EQUITIES, INC. RMY-2

MOTION FOR JOINT ADMINISTRATION AND/OR MOTION FOR APPROVAL TO USE JOINT CAPTIONS FOR MOTIONS AND PLEADINGS FILED IN RELATED CHAPTER 11 CASES
11-23-15 [25]

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

Tentative ruling:

This is the motion of debtor Spyglass Equities, Inc. ("Spyglass") for an order approving joint administration of this case and the case of Consolidated Reliance, Inc. ("Consolidated"), Case No. 15-27284, for procedural purposes only, or in the alternative, for approval to use joint captions for motions and pleadings filed in the two cases. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The motion is brought pursuant to Fed. R. Bankr. P. 1015(b), under which the court may order the joint administration of the bankruptcy estates of a debtor and an affiliate after giving consideration to protecting creditors of different estates against potential conflicts of interest. In general, this court does not look favorably on such motions because "joint administration" is a term that is undefined by the Bankruptcy Code and poorly defined in bankruptcy law, and in the court's experience, joint administration simply leads to confusion, especially in today's age of electronic docketing.[1] In the court's experience, the downside of joint administration usually outweighs its benefits, and the court finds no reason to depart from this general rule here.

The motion focuses on the fact that Spyglass is wholly owned by Consolidated; that the two companies have similar business models and are operated by the same two men; that each has transferred monies to or for the benefit of the other since 2014, which "appear to be" equity contributions in the case of the transfers by Consolidated to Spyglass and dividends in the case of the transfers by Spyglass to Consolidated; and that the debtors expect to file "several" notices, applications, motions, orders, and other pleadings in the two cases, which "could result" in numerous duplicative pleadings being filed and served on separate service lists. Despite the speculative nature of possible duplication of pleadings in the two cases, the debtor wants the clerk's office to maintain a single docket for both cases and to combine notices to creditors and other parties-in-interest. (The debtor would allow for proofs of claim to be filed in each case and would file its own separate monthly operating reports, "unless the U.S. Trustee agrees to some other requirement.")

The possibility of duplication of pleadings is not sufficient to warrant joint administration of these cases. The two debtors' assets are completely different. The debtors have some creditors in common but each also has a significant number of creditors who are not creditors of the other. There are wide differences between the totals of the debtors' respective secured debts, priority unsecured debts, and general unsecured debts. It is highly unlikely that the debtors will be filing identical plans and disclosure statements. Further, it is far from clear that all the motions, applications, and so on, filed by the two debtors in the exercise of their respective fiduciary duties as debtors-in-possession will be identical or even

substantially similar, such that a single docket would be appropriate. The debtor has not addressed the propriety of a single docket for motions and applications that may be filed by creditors and the confusion it would likely cause appears to outweigh the marginal benefit. Finally, given the apparently significant transfers between the two debtors in the past couple of years, transfers which, the court notes, were not disclosed in their respective statements of financial affairs, the court finds that there are significant potential conflicts of interest between them and that joint administration of the cases would likely tend to obscure those potential conflicts.[2]

For the reasons stated, the motion will be denied except as follows:

(1) When an identical motion or other document is filed in both cases, the moving party or other party-in-interest filing the document, or documents, may use a joint caption. The motion or other document, however, shall be filed separately in each case.

(2) When an identical request for relief is filed in both cases, a single notice containing a joint caption may be served on all parties entitled to notice. The notice and proof of service, however, shall be filed in each case.

(3) When an identical document is filed in the two cases, the document shall highlight, or otherwise designate, in which case it is being filed. Also, where applicable, a single docket control number shall be used on each document, in compliance with LBR 9014-1(c).

The court will hear the matter.

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1 It appears the debtor itself is not entirely clear on what it means by "joint administration." In the title of its motion, the debtor refers to joint administration of the chapter 11 proceedings, whereas in the text, it refers to an order "administratively consolidating" the two cases "for procedural purposes only" and to "jointly administer[ing] and consolidat[ing]" the two cases for procedural purposes only. Indeed, the debtor requests that an entry be made on the court's docket in the Spyglass case, but not in the Consolidated case, that "[a]n order has been entered in this case directing the procedural consolidation and joint administration" of the two cases. In other words, the debtor appears to use the terms administration and consolidation interchangeably, whereas they are distinct concepts in bankruptcy law.

2 The debtors' counsel's motion for approval of his employment in the Spyglass case is set for hearing on December 23, 2015. (His employment has been approved in the Consolidated case.) However, it appears that this motion for joint administration, with its disclosure of significant transfers of monies back and forth between the two debtors without a proper accounting, facially precludes counsel from representing both debtors.

50.	12-26188-D-7 FF-6	FELIX/SVETLANA VEYTSMAN	MOTION TO AVOID LIEN OF JPMORGAN CHASE BANK, N.A. 11-19-15 [70]
51.	12-26188-D-7 FF-7	FELIX/SVETLANA VEYTSMAN	MOTION TO AVOID LIEN OF TRI COUNTIES BANK 11-19-15 [75]
52.	12-26188-D-7 FF-8	FELIX/SVETLANA VEYTSMAN	MOTION TO AVOID LIEN OF CAPITAL ONE BANK USA, N.A. 11-19-15 [80]