UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 7, 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. 14-30004-D-7 DES-1 — PHILLIP/MARY WHITE — MOTION TO AVOID LIEN OF CARTER-JONES COLLECTION SERVICE, INC. 12-4-14 [16]

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.

2. 13-26605-D-7 13-2358 CHEEMA V. KEY BANK/AMERICAN EDUCATION ET AL — SANDEEP CHEEMA USA-1 — MOTION FOR SUMMARY JUDGMENT 12-9-14 [47]

Final ruling:

This matter was resolved by stipulated order entered on December 30, 2014. As such, the matter is removed from calendar. No appearance is necessary.

3. 14-26709-D-7 MARK/BEBSY ROGERS — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1
EVERBANK VS.
12-3-14 [24]

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 debtors received their discharge on October 28, 2014 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.

4. 14-20710-D-7 JERENE BONDS — MOTION FOR COMPENSATION FOR BYRON LEE LYNCH, TRUSTEE'S ATTORNEY
BLL-7
11-26-14 [63]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

5. 14-27519-D-12 LOEK VAN WARMERDAM — MOTION FOR RELIEF FROM AUTOMATIC STAY
TJS-1
JPMORGAN CHASE BANK, N.A.
VS.
11-24-14 [133]

Final ruling:

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

6. 14-27519-D-12 LOEK VAN WARMERDAM — MOTION TO SELL
WW-10 — 12-10-14 [143]

Tentative ruling:

This is the debtor's motion to sell certain DFA capital retains (the "Sale Asset") to Milk Harvest Dairy pursuant to § 363(b) of the Bankruptcy Code (the "Code"). The debtor filed his Chapter 12 case on July 23, 2014, and obtained confirmation of his Chapter 12 plan on October 18, 2014. Accordingly, the debtor is operating post plan confirmation as a revested debtor. Pursuant to § 1227 of the Code, confirmation of the plan vested all property of the estate in the debtor. As a Sale Asset is no longer property of the estate, it is unnecessary to obtain court approval for the sale under section § 363(b). Accordingly, the court intends to deny the motion as unnecessary. The court will hear the matter.

7. 14-29126-D-7 RUTH THOMPSON — OBJECTION TO REPORT OF NO DISTRIBUTION BY DMETRI JAMISON
DJA-1 — 12-5-14 [29]

8. 14-29229-D-7 SHANE HOLLSTROM — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1 — 12-4-14 [14]
BANK OF AMERICA, N.A. VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor's Statement of Intentions indicates he intends to surrender the collateral and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

9. 14-31131-D-7 GAIL HARPER — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-5-14 [27]

Final ruling:

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

10. 12-30140-D-12 DF-5 — PAUL/BETTY DAVIS — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE AND MOTION FOR COMPENSATION FOR DAVID FILLERUP, DEBTORS' ATTORNEY 11-24-14 [70]

Tentative ruling:

This is the debtors' objection to the Notice of Mortgage Payment Change (the "Notice") filed by Deutsche Bank National Trust Company (the "Bank"). The debtors also request an award of their attorney's fees allegedly incurred in bringing the objection, $2,480 plus additional fees incurred from the date the objection was filed, November 24, 2014. The Bank has filed opposition, but has also proposed a stipulation to resolve the matter. For the following reasons, the court will sustain the objection and award the debtors their attorney's fees incurred from the date of the deadline the debtors' counsel gave the Bank's counsel to respond to his request for additional information to the date he filed the objection.

The debtors object to the increase in their monthly mortgage payment announced in the Notice as beginning with the December 2014 payment. There is no dispute about the principal and interest portion of the increased payment, just the escrow account portion.[1] The debtors' current mortgage payment includes an escrow payment of $309.12. By way of the Notice, the Bank proposed to increase that amount to $462.41 based on an alleged escrow account shortage of $1,839.50. (The increase in the escrow account payment would be $153.29 ($462.41 minus $309.12), which is one-twelfth of $1,839.50; thus, payment of the alleged escrow shortage would be spread over 12 months.) The debtors complained in their objection that the Bank failed to include in the Notice any calculations showing how it arrived at the alleged $1,839.50 shortage. The debtors were correct on this point. As a result, the debtors concluded that the shortage must include the pre-petition escrow account shortage included in the Bank's pre-petition proof of claim, $1,716.51. Based on the analysis provided by the Bank in its opposition to the objection, it appears that conclusion is incorrect.

First, the Bank refers to an escrow account statement dated August 1, 2014, which was attached to the Notice, and specifically, to what appears to be page 2 of the statement (although the court cannot be sure, as nothing on page 2 appears to connect it contextually to page 1). On that page 2 is a table, called "Table 3," listing 13 months – November through the following November, showing separate columns for the debtors' estimated and actual payments into the escrow account, on a monthly basis, and for the Bank's estimated and actual disbursements out of the escrow account twice yearly for the payment of property taxes. As the table covers a 13-month period, it includes three property tax payments, two of them actual and one estimated. Although the table includes only the names of the months and not the years, which would have been handy, the court has been able to determine from the copies of the property tax statements provided by the debtors that the period covered by the table is November 2013 through November 2014. Based on the actual payments made by the debtors into the account and the actual and estimated payments made and to be made by the Bank out of the account, it appears there was a shortage in the account as of the end of November 2014 (and after payment of the property tax payment due December 10, 2014) of -$1,221.26.

The Bank explains in its opposition that to that figure, the Bank added an amount equal to one-sixth of the total amount of property tax payments actually due for the 2013/2014 tax year, $3,709.44, or $618.24 ($3,709.44 ÷ 6). The one-sixth

figure, the Bank claims, the Bank may require in the escrow account as a "cushion," as permitted by the applicable regulation under the Real Estate Settlement Procedures Act. Because the debtors have not maintained the one-sixth cushion in the account, the Bank added it as a negative figure to the escrow account shortage, resulting in a total escrow account shortage of -$1,839.50 (-$1,221.26 plus -$618.24). It is this total shortage that the Bank then divided by 12 to arrive at the amount of the increase in the required monthly payment toward the escrow account, $153.29 ($1,839.50 ÷ 12), to bring the total monthly payment to the escrow account to $462.41. Thus, it appears the escrow account shortage included in the Notice, $1,839.50, is based on a post-petition, not a pre-petition, shortage, and the debtors' conclusion on this point was incorrect.

That said, however, the court has concerns about the Bank's explanation, the first of which is that the Bank's counsel, the individual who signed the Notice, did not respond to the debtors' counsel's request that the parties attempt to resolve the matter informally. The debtors' counsel e-mailed the Bank's counsel on November 10, 2014 with his own detailed analysis of the escrow account; that is, with a detailed list of what he believed should be shown as payments and other credits to the account and disbursements from the account. He noted that the trustee had apparently held the debtors' first four plan payments in suspense, due to a delay in the trustee's signing of the order confirming the plan. Thus, the debtors' counsel proposed that the trustee would use those suspense funds for current plan payments, and the debtors would, instead of making those plan payments, make four payments directly to the Bank under a pre-confirmation stipulation for adequate protection. After application of those four additional payments, to be made in November and December 2014, the debtors' counsel calculated the balance in the escrow account would be a positive $170.77 as of December 2014, not the negative $1,839.50 asserted by the Bank.

The debtors' counsel requested that the Bank's counsel provide an accounting of the escrow account shortage by November 14. He added that if an informal agreement could be reached, each party would bear their or its own attorney's fees, but if they could not reach agreement by November 21, he would file an objection to the Notice. The debtors' counsel followed up with another e-mail on November 13, advising that the trustee would distribute the suspense funds as plan payments and the debtors would pay the four additional payments as payments under the adequate protection stipulation, two in November and two in December. He requested an address to which those payments should be sent. When the Bank's counsel had not responded by November 24, the debtors' counsel proceeded to file this objection.

As indicated, the Bank's counsel did not respond to the debtors' counsel. However, the Bank concluded its opposition to the debtors' objection with the information that "[a]s of December 18, 2014, Debtors are paid ahead to March 2015," and that "Creditor also holds an amount of $1,017.36 in a suspense account." Bank's Opp., filed Dec. 24, 2014, at 6:11-12. The Bank proposed the following stipulation:

> a. [The Bank] can withdraw the Notice of Mortgage Payment Change.
>
> b. [The Bank] can re-analyze the escrow accounting to reduce the monthly escrow amount from $462.41 to $309.12 per month.
>
> c. The escrow shortage amount of $1,839.50 can be paid using the suspense amount of $1,017.36 plus a portion of the mortgage payment amount. If Debtors agree to this treatment, this will make Debtors' loan paid ahead to February 2015.

Id. at 6:14-20. In the prayer to its opposition, the Bank requested that the debtors' objection be overruled, and that the parties "be allowed" to stipulate to the above treatment.

The court has a significant concern in that the Bank had every opportunity to provide information to the debtors' counsel supporting the alleged escrow shortage and the proposed change in the escrow account payment, but failed to provide the information, and apparently declined the debtors' counsel's request to attempt an out-of-court resolution. This resulted in the debtors incurring attorney's fees for the objection and the court devoting time and effort to the objection and opposition, all of which probably should have been unnecessary. Further, it appears the alleged escrow account shortage derived, at least in part, from the fact that the Bank is holding $1,017.36 in a suspense account and the fact that the trustee was also holding funds in suspense. Both these issues were raised by the debtors' counsel in his e-mails to the Bank's counsel, but the Bank did not respond.

Under Fed. R. Bankr. P. 3002.1(i)(2), the court may award appropriate relief, including reasonable attorney's fees, caused by a mortgage creditor's failure to provide "any information" required by subdivision (b) of the same rule. Subdivision (b), in turn, requires the creditor to file and serve a "notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due." The Notice in this case was the notice required by this rule. However, it did not provide sufficient information from which the debtors could determine whether the escrow account adjustment was appropriate, and the Bank did not reply to the debtors' attorney's very specific inquiry. Although the debtors' counsel gave the Bank's counsel a fairly short deadline for a response, the Bank's counsel did not request additional time; there was simply no response.

Based on the Bank's proposal to (1) withdraw the Notice; (2) re-analyze the accounting to reduce the monthly escrow payment from $462.41 to $309.12; and (3) apply the suspense funds, $1,017.36, to the account shortage, the court concludes that the debtors' objection to the Notice was well taken, and the objection will be sustained. In addition, because the Bank failed to provide sufficient information to the debtors to enable the matter to be resolved without the need for court intervention, the court will award the debtors their attorney's fees for their attorney's time beginning November 21, 2014, the deadline their attorney gave the Bank's attorney for a response, a total of 8.1 hours. Up to that date, the debtors' attorney was simply reviewing and assessing the Notice, and the court does not find an award for that time, for which the debtors' counsel billed an additional 4.3 hours, to be appropriate. The debtors' counsel's time records are sufficient to show that the time comprising the 8.1 hours was reasonable and necessary to address the Bank's failure to respond, and counsel's hourly rate, $200, was also reasonable. Accordingly, the court will award the debtors attorney's fees in the amount of $1,620, to be paid immediately by the Bank.

The court will hear the matter.

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1 The escrow account is for the payment of property taxes only, not homeowner's insurance, which the debtors apparently pay themselves.

11. 14-25148-D-11 HENRY TOSTA
MF-26

MOTION TO USE CASH COLLATERAL
12-9-14 [336]

12. 12-29949-D-7 RICHARD/JEANNE LOTT
HWW-7

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
12-9-14 [104]

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.

13. 12-29949-D-7 RICHARD/JEANNE LOTT
HWW-8

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
12-9-14 [109]

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.

14. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2399
BURKART V. SHARMA

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-8-14 [94]

15. 14-27950-D-7 KRYSTAL GILLASPIE — MOTION TO AVOID LIEN OF ARROW FINANCIAL SERVICES
ALB-2 — 12-7-14 [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.

16. 14-29552-D-7 SHIRLEY FONTAINE — MOTION FOR RELIEF FROM AUTOMATIC STAY
EJF-1 — 12-2-14 [12]
GREENTREE SERVICING, LLC VS.

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor's Statement of Intentions indicates she intends to surrender the collateral and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

17. 14-21455-D-7 ABRAHAM/SILVIA MAGALLANEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-2 — 12-9-14 [69]
SETERUS, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Seterus, 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 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.

18. 14-30158-D-7 CRISTINA NASRAWI — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-8-14 [31]

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

19. 09-29162-D-11 SK FOODS, L.P. — CONTINUED MOTION TO DISMISS
14-2025 BMZ-1 — ADVERSARY PROCEEDING
SHARP V. KASOWITZ, BENSON, TORRES & FRIEDMAN, LLP ET AL — 3-28-14 [21]

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

Tentative ruling:

This is the motion of defendants Kasowitz, Benson, Torres & Friedman, LLP and Donald J. Putterman (the "defendants") pursuant to Fed. R. Civ. P. 12(b)(3), incorporated herein by Fed. R. Bankr. P. 7012(b), to dismiss this adversary proceeding on the basis that it was brought in an improper venue. The plaintiff, who is the trustee in the chapter 11 case in which the adversary proceeding is pending (the "trustee"), has filed opposition, and the defendants have filed a reply. Because arbitration in this instance would inherently conflict with the purposes of the Bankruptcy Code, the motion will be denied.[1]

The court considers the outcome of the motion to be heavily influenced, if not governed, by Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.), 671 F.3d 1011 (9th Cir. 2012). In that case, an insurance carrier, Continental, sought to enforce the arbitration clause in a settlement agreement it had entered into with the debtor, a distributor of asbestos-containing products, four years before the debtor filed bankruptcy. Continental alleged that the debtor had violated the settlement agreement when, in contemplation of filing bankruptcy, it entered into agreements with its other insurance carriers under which those carriers agreed to fund an asbestos trust to be established under § 524(g) of the Bankruptcy Code[2] and to assign to the debtor their contribution, indemnity, and subrogation claims against, among others, Continental, in exchange for the debtor agreeing to file bankruptcy and seek an injunction to protect the insurers from asbestos-related claims. Continental alleged the debtor had also violated the settlement agreement by negotiating with asbestos claimants soliciting their consent to the debtor's proposed plan of reorganization.

The Ninth Circuit first recognized the important federal policy favoring arbitration agreements (671 F.3d at 1020), but noted that the policy yields where there is "an inherent conflict between arbitration and the statute's underlying purposes." Id. quoting Shearson/American Express v. McMahon, 482 U.S. 220, 227 (1987). The court observed that courts generally draw a distinction between core and non-core proceedings in making the analysis, such that "[i]n non-core proceedings, the bankruptcy court generally does not have discretion to deny enforcement of a valid prepetition arbitration agreement" (671 F.3d at 1021), whereas "[i]n core proceedings . . . the bankruptcy court, at least when it sees a conflict with bankruptcy law, has discretion to deny enforcement of an arbitration agreement." Id. This is because "non-core proceedings are unlikely to present a conflict sufficient to override by implication the presumption in favor of arbitration, whereas core proceedings implicate more pressing bankruptcy concerns." Id. (citation and internal quotations omitted). However, although the distinction is important, it is not determinative. Id. Thus, "even in a core proceeding, the McMahon standard must be met; that is, a bankruptcy court has discretion to decline

to enforce an otherwise applicable arbitration provision only if arbitration would conflict with the underlying purposes of the Bankruptcy Code." Id.

The court held, first, that because Continental had made its allegations against the debtor by way of a proof of claim to which the debtor had objected, resolution of the dispute was a core proceeding. 671 F.3d at 1021-22. "One can readily see that allowing a claim for Continental would affect what was available for all creditors to receive. Continental's claim disputed or affected assets in the § 524(g) trust (the Settling Insurers' contribution, indemnity, and subrogation rights) and the rights of other creditors (the asbestos claimants)." Id. at 1021. The dispute was a core proceeding regardless of Continental's position that its claim was a state law breach of contract claim that arose outside and independent of the bankruptcy case. Id.

Next, the Ninth Circuit agreed with the bankruptcy court's findings that the debtor's alleged breaches of the settlement agreement were "inextricably intertwined" with its bankruptcy, that resolving Continental's claim required considering the debtor's conduct in administering the case and negotiating with the various claimants toward a consensual plan, and that "[a]s a matter of fundamental bankruptcy policy, only a Bankruptcy Court should decide whether the manner in which someone has administered a bankruptcy estate gives rise to a claim for damages." 671 F.3d at 1022. Thus, "adjudication of Continental's claim in any forum other than a bankruptcy court would conflict with 'fundamental bankruptcy policy.'" Id., quoting the bankruptcy court. As the district court phrased it in affirming the bankruptcy court, "Continental's claim raised questions 'go[ing] to the heart of § 524(g) and the management of an asbestos-related bankruptcy estate,' that 'should be resolved by a bankruptcy judge and not an arbitrator.'" Id., quoting the district court.

Addressing the matter first in the context of the case as an asbestos-related case, the Ninth Circuit stated:

> A claim based on a debtor's efforts to seek for itself and third parties the protections of § 524(g) implicates and tests the efficacy of the provision's underlying policies. Because Congress intended that the bankruptcy court oversee all aspects of a § 524(g) reorganization, only the bankruptcy court should decide whether the debtor's conduct in the bankruptcy gives rise to a claim for breach of contract. Arbitration in this case would conflict with congressional intent.

671 F.3d at 1022. However, the court did not limit its remarks to the asbestos context:

> Even apart from § 524(g), the purposes of the Bankruptcy Code include centralization of disputes concerning a debtor's legal obligations and protecting creditors and reorganizing debtors from piecemeal litigation. Arbitration of a creditor's claim against a debtor, even if conducted expeditiously, prevents the coordinated resolution of debtor-creditor rights and can delay the confirmation of a plan of reorganization.

Id. at 1022-23 (citations, internal quotation marks, and footnote omitted).

This court finds the reasoning of the Thorpe court to be particularly apposite in this case. Whereas Thorpe concerned the debtor's conduct in preparing for and administering its chapter 11 case, the present case involves the defendants' conduct

in representing both the debtor and related entities in preparing for the filing of the debtor's case and in continuing to represent the related entities post-petition, thus acting with what this court has already found constituted a conflict of interest. The trustee alleges the defendants' conduct hindered and delayed his administration of the case and damaged the estate. Thus, the facts in Thorpe and in this case both directly involve the debtor's preparation for filing and the administration of the estate in the early days of a complex case.

In Thorpe, the issue was whether the debtor's conduct was appropriate; in this case, it is whether the defendants' conduct was appropriate. The court finds that similar policy considerations apply to both. In Thorpe, the essential questions concerned the debtor's conduct in working, primarily pre-petition, with its insurers other than Continental toward the creation of an asbestos trust under the Bankruptcy Code and with its asbestos claimants toward acceptance of a plan of reorganization. Thus, the bankruptcy court held:

> Although the conduct of which [Continental] complain[s] may have commenced prepetition, the acts of which [Continental] complain[s], if true, are inextricably intertwined with the manner in which [Thorpe is] attempting to structure, orchestrate, and obtain approvals for what is likely to be a complex plan of reorganization. Resolution of these claims would require the trier of fact to adjudicate whether in conducting and administering these Chapter 11 cases and negotiating with the various constituencies involved in the case concerning the prospect of a consensual plan of reorganization, [Thorpe] has somehow run afoul of contractual provisions contained in a prepetition settlement agreement with [Continental]. Such matters are within the exclusive jurisdiction of the Bankruptcy Court. As a matter of fundamental bankruptcy policy, only a Bankruptcy Court should decide whether the manner in which someone has administered a bankruptcy estate gives rise to a claim for damages. Non-bankruptcy courts cannot be the arbiters of such issues.

671 F.3d at 1017 (quoting the bankruptcy court).

Just as in Thorpe, the issues in this adversary proceeding go directly to the heart of the administration of the bankruptcy estate. In his motion to disqualify the defendants from representing the related entities, the trustee alleged the defendants, through their pre-petition representation of the debtor, had obtained confidential information and played a role in formulating strategies that were critical to the trustee's ability to administer the estate, including his adversary proceeding to substantively consolidate the related entities. Thus, and for the following additional reasons, it is clear that the defendants' formal representation of the related entities, up through the time the defendants were disqualified from that representation, was inextricably intertwined with the trustee's administration of the case. In those early months, the defendants represented the related entities in opposing (1) the trustee's motion to determine that certain wastewater discharge agreements, which the trustee alleges were critical to the value of the debtor's operating assets, were executory contracts, (2) the trustee's notice of the cure amounts for assumption, sale, and assignment of leases and executory contracts, (3) the trustee's motion for approval of bidding procedures, (4) his motion to sell substantially all the debtor's operating assets, (5) his motion to assume and assign executory contracts and leases, (6) his motion to employ a tax accountant, (7) his motion for an order authorizing his continued possession of documents pertaining to the related entities, (8) his counsel's invoices in support of its request for fees (106-page and 72-page oppositions), and (9) his motion to approve the sale of remaining furniture and equipment. Significantly, the defendants filed and

prosecuted a motion to remove the trustee and disqualify his counsel, and vigorously opposed the trustee's motion to disqualify the defendants. It could hardly be more clear that the defendants' conduct, which the trustee alleges hindered and interfered with his administration of the estate, to the detriment of the estate, went directly to the heart of the bankruptcy case.[3] For that reason, the court concludes that only the bankruptcy court should determine whether the defendants' conduct gives rise to a claim for damages, and that arbitration would therefore "conflict with 'fundamental bankruptcy policy.'" 671 F.3d at 1022.

In addition, the defendants' proof of claim and the trustee's objection to it, through this adversary proceeding, render the dispute a core proceeding,[4] and although that is not determinative of the arbitration issue, it is significant.[5] The defendants claim they filed their proof of claim only "in response to the Trustee's adversary complaint," and that the claim "does not seek affirmative relief, but is merely meant to provide an offset if the Trustee prevails on [his] claims . . . ." Reply at 7:5-6. The court has reviewed the proof of claim and the attachment to it, and finds nothing therein even hinting that the claim does not seek affirmative relief but seeks only to preserve the right to an offset against the trustee's claims. And the district court, in a recent decision denying the defendants' motion to withdraw the reference of this adversary proceeding, found that the defendants had "offered nothing suggesting [they] filed the proof of claim defensively . . . ." Order filed Nov. 19, 2014, in Sharp v. Kasowitz, Benson, Torres & Friedman, LLP, et al., United States District Court, Eastern District of California, Case No. 2:14-cv-1169-KJM-AC (the "district court order"), at 11:9.

The defendants admit that the allowance of their claim "will turn entirely on the facts that will be litigated in the claims asserting that [the defendants] breached the standard of care in representing the Debtors." Reply at 5:12-14.[6] The district court noted that the defendants' claim seeks administrative priority, and concluded that "[t]he claim would not exist apart from the bankruptcy proceedings and the malpractice and breach of fiduciary duty claims will be resolved in the course of considering [the defendants'] claim for payment." District court order, at 13:18-20. For these reasons, court rejects the defendants' contentions that the proof of claim is irrelevant to the arbitration issue and that the proof of claim and the trustee's objection, involving as they do issues of state law concerning a lawyer's duty to his client, do not go to the heart of the bankruptcy case.[7]

Finally, the defendants have filed an objection to the trustee's request for judicial notice of his first amended complaint filed in the adversary proceeding. The defendants acknowledge that the court may take judicial notice of the fact of filing of the amended complaint; "however, the request for judicial notice of its substance is frivolous." Defendants' Obj. to Plaintiff's Request for Judicial Notice, filed Dec. 30, 2014, at 2:5. The court does not read the trustee's request that way, but in any event, assures the defendants it has taken judicial notice only of the fact of filing of the amended complaint and of its allegations, and not of the truth of those allegations.

The court will hear the matter.

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1 The court need not and does not decide whether the trustee's claims fall within the scope of the Kasowitz retainer agreement and the arbitration clause.

2 That section provides for the establishment of a trust for asbestos claimants in cases involving debtors who were asbestos producers or distributors, and for an

accompanying injunction against collection by asbestos claimants other than from the trust.

3 For these reasons, the court rejects the defendants' conclusions that their "alleged acts that are the subject of the complaint did not involve malfeasance in the administration of the post-petition bankruptcy estate" (Defendants' Reply, filed Dec. 30, 2014 ("Reply") at 2:9-10) and that "[s]ubstantially all of the matters in dispute would have been the same even if no bankruptcy case had been filed." Id. at 2:11-2.

4 Despite Continental's position that its proof of claim presented only state law breach of contract claims, "Continental filed a proof of claim, and Thorpe objected to the claim, so under 28 U.S.C. § 157(b)(2)(B), the allowance or disallowance of that claim was a core proceeding." Thorpe, 671 F.3d at 1021.

5 "[T]he core/non-core distinction, though relevant, is not alone dispositive." Id.

6 The defendants make this admission to support their contention that the facts here are akin to those in In re Cardali, 2010 WL 4791801 (Bankr. S.D.N.Y. 2010). The defendants cite that case, however, for the proposition that a core proceeding will rarely conflict with any policy of the Bankruptcy Code, whereas the Thorpe decision makes clear that, whereas non-core proceedings are not likely to present such a conflict, "core proceedings implicate more pressing bankruptcy concerns." Thorpe, 671 F.3d at 1021.

7 It is, however, irrelevant that, as alleged by the defendants, the trustee may have filed his amended complaint, in which he added the objection to the defendants' proof of claim, only after he became aware the defendants intended to move to compel arbitration, and that "besides filing the claim to preserve its rights, [the defendants have] taken no further action on the claim." Reply at 4:22-23.

20.	14-20064-D-7	GLENN GREGO	MOTION FOR RECONSIDERATION AND FOR ISSUE OF ORDER TO SHOW CAUSE 12-1-14 [155]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's motion for reconsideration of the November 20, 2014 order denying his motion to dismiss this case, and for issuance of an order to show cause why sanctions should not be imposed on the law firm of Parker, Milliken, et al., for intentional misrepresentation and breach of an agreement. The request for an order to show cause is made pursuant to Fed. R. Bankr. P. 9011. Pacific Western Bank (Parker, Milliken's client) has filed opposition, and the debtor has filed a reply.

The motion will be denied for both procedural and substantive reasons. The procedural reasons are these: (1) the motion and notice of motion, together with the supporting declarations and exhibits, and the proof of service, were filed as a single document rather than separately, as required by LBR 9014-1(d)(2) and (e)(3) and the court's Revised Guidelines for the Preparation of Documents, EDC 2-901; (2) the moving papers do not contain a docket control number, as required by LBR 9014-1(c) (it appears instead that the moving party's counsel anticipated that the notice

of motion and motion would appear on the court's docket as DN 155, and thus, used that number as the docket control number, whereas the docket number and the docket control number are entirely different things); (3) the notice of motion and motion improperly informed potential respondents that any opposition was due at least one day prior to the scheduled hearing date, which is not an appropriate time frame for the filing of opposition under either subdivision of the applicable rule (see LBR 9014-1(f)(1) and (f)(2)); (4) the moving party failed to serve the IRS and the Franchise Tax Board at their addresses on the Roster of Governmental Agencies, as required by LBR 2002-1; (5) the moving party failed to serve the creditor filing Claim No. 3 at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g); (6) the moving party failed to serve the creditors filing Claim Nos. 4 and 7 at all, as required by Fed. R. Bankr. P. 2002(a)(4); and (7) the moving party failed to serve the creditor requesting special notice at DN 98 at its designated address, as required by Fed. R. Bankr. P. 2002(g).1

The motion will be denied for the following additional independent reasons. First, the debtor has failed to demonstrate that there are no creditors in this case to whom a distribution might be made. In his motion to dismiss this case, the debtor alleged that (1) he has no general unsecured debts, all such debts having been previously discharged in another bankruptcy case; (2) the debtor is working toward modifications of his secured loans and is addressing outstanding tax claims by way of amended returns; (3) the debtor has been precluded from receiving a discharge; and therefore, (4) there is nothing to administer, and therefore, no reason for the case to continue. Pacific Western Bank (the "Bank") filed opposition to the motion and appeared at the hearing to oppose the motion, claiming the debtor has significant assets as well as creditors to whom a distribution could be made. For the reasons stated on the record at the hearing, the motion was denied.

This motion for reconsideration is based on the debtor's allegations that the Bank is not a creditor of the debtor, and that it falsely represented itself as a creditor in its opposition and at the hearing on the debtor's motion to dismiss the case. In his points and authorities in support of this motion for reconsideration, the debtor claims the Bank and its attorneys "have masqueraded and posed as creditors in order to buy themselves out of litigation authorized by the San Luis Obispo County Superior Court." Point and Authorities, p. 9 of the debtor's Notice of Motion and Motion, filed Dec. 1, 2014, at 9:10-11. The Bank has filed opposition, including significant declaratory evidence that strongly undermines the debtor's factual allegations. However, the court need not reach the issue of whether the Bank is a creditor in order to resolve this motion.

There are $93,168 worth of claims on file in this case, including $58,852 in priority and general unsecured claims. To date, there have been no objections filed to any of the claims; thus, as of this date, pursuant to § 502(a) of the Bankruptcy Code, all of the claims are deemed allowed. Further, as of this date, the proofs of claim constitute prima facie evidence of the validity and amount of the claims. Fed. R. Bankr. P. 3001(f). The debtor has failed to object to any of the claims, but even if he had, based on the evidence presented by the debtor and the Bank on this motion, the court would conclude the debtor's evidence is not sufficient to shift the burden to the Bank to prove its claim. See Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000). Thus, the court concludes that there are creditors in this case for whose benefit assets may be administered.

Second, the debtor has failed to demonstrate that there are no assets to administer. The debtor's conduct in this case with respect to his bankruptcy schedules has been such that the court gives no credence whatsoever to his latest

Schedule A, in which he has reduced the values of four of his five real properties to amounts that precisely equal the amounts of the liens against them, whereas in two earlier Schedules A, both filed under the penalty of perjury, the debtor listed much higher values.2 The court finds that the debtor filed the most recent Schedule A with the significantly reduced values for the sole purpose of making it appear there is no equity in the properties that might be realized for the benefit of creditors; that is, for the sole purpose of benefitting himself at the expense of his creditors.

The court has a similar problem with the debtor's contention that a particular state court lawsuit in which he is the plaintiff is not an asset of the bankruptcy estate in this case. The lawsuit is against a receiver earlier appointed by the San Luis Obispo County Superior Court to manage a real property asset of the debtor's. The debtor states that one cannot legally file suit against a court-appointed receiver until he or she has obtained authorization to do so from the court that appointed the receiver. Thus, the debtor claims that because he did not obtain authorization from the state court to sue the receiver until after his petition commencing this bankruptcy case was filed, the lawsuit is not an asset of the estate. That is, in the debtor's view, "since authorization was not obtained until after the filing of this Bankruptcy Petition, the lawsuit is not an asset of this estate." Notice of Motion and Motion, filed Dec. 1, 2014, at 2:4-6.

This statement represents a fundamental misunderstanding of bankruptcy law. It is clear from the ruling by which the state court authorized the debtor to proceed against the receiver, a copy of which the debtor has submitted as an exhibit, that the debtor's claims against the receiver arose prior to the filing of the debtor's bankruptcy petition. In fact, the debtor had, prior to the bankruptcy filing, filed a lawsuit against the receiver in Los Angeles County Superior Court, in which the receiver had demurred on the ground that the debtor had not obtained authorization from the San Luis Obispo County Superior Court to sue the receiver. Further, six weeks before this bankruptcy case was filed, the debtor had filed an application in San Luis Obispo County Superior Court for authorization to prosecute his claims against the receiver. It was that application that was ruled on by the San Luis Obispo County court after the filing of the bankruptcy petition.

It is a matter of basic bankruptcy law that a debtor's causes of action become property of his bankruptcy estate upon the filing of a bankruptcy petition. 11 U.S.C. § 541(a)(1); Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001). It matters not at all that the state court did not authorize the filing of the lawsuit until after the bankruptcy petition was filed. The claims themselves were in existence on the date the petition was filed, and thus, they became property of the bankruptcy estate. Whether the trustee will choose to pursue the claims is another matter; what is relevant for purposes of this motion is that the lawsuit, along with several others disclosed by the debtor in either his amended statement of affairs or amended Schedule B, are property of the estate, and, together with the equity in the debtor's real properties, constitute assets that might, depending on their value, be liquidated for the benefit of creditors.

The debtor has filed a reply to the Bank's opposition, with which he also filed four declarations and five exhibits. The reply, declaration, and exhibits only aggravate the debtor's initial failure to disclose his claims against the former receiver and his counsel's misunderstandings of bankruptcy law and procedure evident in the original motion. The reply and declarations filed with it are replete with blatant hearsay, speculation, and unsupported invective against the former receiver, the Bank's predecessor bank, and its attorney. Further, if the debtor's reply is to

be believed, his claim against the receiver, which he did not disclose in this bankruptcy case, has a value of over a million dollars, based on a long list of personal property assets, including a boat, diamonds, and a valuable Superman comic book the debtor suggests were converted by the receiver. In his own declaration, the debtor's attorney expresses his unsupported opinion that the lawsuit "is a form of regulatory power by the local court of an agent which the Court itself appointed and is therefore not subject to being liquidation by a Chapter 7 Trustee." W. Ramey Decl., filed Dec. 31, 2014 with debtor's reply, at 12:7-9. He also claims the debtor has amended his schedule of exemptions to claim a homestead exemption in a property he did not live in on the date of filing, apparently based on counsel's opinion that damages for unlawful foreclosure of a former residence qualify for a homestead exemption. Counsel also offers his own opinion, based solely on hearsay, and lacking foundation and authentication, that the various proofs of claim filed in the case are mistakes. In short, the reply changes nothing about the court's decision to deny this motion.

The court concludes that there are both creditors and assets in this case. The fact that both have now come to light leads the court to conclude that dismissal of the case would result in plain legal prejudice to the creditors. In short, contrary to the debtor's representations, there are unsecured creditors whose right to a distribution from assets the debtor has also misrepresented might well be prejudiced by dismissal of the case. "A case will not be dismissed on the motion of a debtor if such dismissal would cause 'some plain legal prejudice' to a creditor." Hickman v. Hana (In re Hickman), 384 B.R. 832, 840 (9th Cir. BAP 2008) (citations omitted). The debtor, who has the burden of persuasion on this issue (id. at 841), has failed to meet his burden of demonstrating that no legal prejudice would result from dismissal. Accordingly, the motion will be denied.

The debtor's request for an order to show cause directed to Parker, Milliken is based on his assertion that the firm intentionally misrepresented the Bank's status as a creditor in filing opposition and appearing at the hearing on the debtor's motion to dismiss the case. The debtor has failed to demonstrate that the Bank is not a creditor; accordingly, the request for an order to show cause will also be denied. The court notes also that the request for an order to show cause is based on Fed. R. Bankr. P. 9011, whereas the debtor failed to comply with the "safe harbor" provisions of the rule. See Fed. R. Bankr. P. 9011(c)(1)(A).

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

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1 The court pointed out several similar procedural defects at the hearing on the debtor's motion to dismiss the case, and the motion was denied based in part on those defects. Yet with this new motion, the debtor and his counsel have failed to take heed of the court's observations at the hearing.

2 The debtor reported the values of the four properties as lower by $66,909, $62,911, $305,765, and $57,375, respectively, than the values he had twice previously reported. Thus, by the stroke of a couple of computer keys, he attempted to wipe out almost $500,000 in equity that might, based on his own original schedules, be available for creditors.

21. 13-34967-D-7 ERNESTO/MARIA ESTRADA — MOTION TO COMPEL ABANDONMENT
TOG-13 — 12-11-14 [104]

22. 14-29170-D-7 VAUNA KRACHT — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 11-24-14 [22]
HYUNDAI LEASE TITLING TRUST
VS.

Final ruling:

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

23. 14-30870-D-11 SKANDIA FAMILY CENTER, INC. — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
11-1-14 [1]

24. 14-26673-D-7 JENNIFER KRUGER-HURST — MOTION TO SELL
BLL-3 — 12-1-14 [44]

Tentative ruling:

This is the trustee's motion to sell certain real property located in Burney, California. The motion was noticed pursuant to LBR 9014-1(f)(1), and no timely opposition (or any) has been filed. However, for the following reason, the court is not prepared to grant the motion at this time.

The motion states that subject to court approval, overbids in $1,000 increments, accompanied by a $2,000 deposit, are invited. However, there is no reference to overbidding in the notice of hearing, which is the only document served on the general creditor body. Thus, potentially interested parties were not notified that overbidding would be invited at the hearing. Further, the following language in the notice may have inhibited interested parties from appearing at the hearing: "The court may decide this matter without a hearing if written objections are not filed with the court before the hearing."

Finally, the notice of hearing contains conflicting information about the deadline for filing written opposition. First, it states that opposition shall be in writing and served and filed at least 14 days preceding the hearing date, adding, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before that date required by the Local Bankruptcy Rules, Rule 9014-1." However, the notice then states, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before that date required by the hearing date."

As a result of these notice defects, the court intends to deny the motion. Alternatively, the court will continue the hearing and require the moving party to file a notice of continued hearing, which shall advise all creditors of the possibility of overbidding at the hearing, and which shall omit the conflicting information about the deadline for the filing of written opposition. The court will hear the matter.

25.	14-29673-D-7 JHW-1 FIRST INVESTORS SERVICING CORP. VS.	TARYN WASHINGTON AND ALITA HENDERSON	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-19-14 [22]

Final ruling:

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

26.	14-31079-D-7	MAURICE CARR	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 11-10-14 [6]

27. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
AMS-4 AUTOMATIC STAY
CASTLE PRINCIPLES, LLC, ET 12-8-14 [1252]
AL. VS.

Final ruling:

This matter is resolved without oral argument. This is Castle Principles, LLC's motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

28. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
AMS-5 AUTOMATIC STAY
CASTLE PRINCIPLES, LLC, ET 12-10-14 [1257]
AL. VS.

Final ruling:

This matter is resolved without oral argument. This is Castle Principles, LLC's motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

29. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
SES-2 AUTOMATIC STAY
KB HOME COASTAL, INC. VS. 11-24-14 [1245]

Final ruling:

This matter is resolved without oral argument. This is KB Home Coastal, Inc.'s motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

30. 11-34093-D-7 BONNIE THURMAN — MOTION TO SELL
HCS-2 — 12-10-14 [37]

31. 14-30897-D-7 DANIEL/CHERYL MCELROY — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 12-2-14 [9]
SANTANDER CONSUMER USA, INC.
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.

32. 14-31725-D-11 TAHOE STATION, INC. — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
11-30-14 [1]

Tentative ruling:

This is a continued status conference in this chapter 11 case. The hearing was continued, and the debtor was required to file a status conference statement and to serve it, along with a notice of continued status conference, on all creditors no later than December 23, 2014. The debtor was also required to file the schedules and statements that had not yet been filed in the case, also no later than December 23, 2014. On December 23, 2014, the debtor filed its remaining schedules and statements, along with a notice of continued status conference and a status conference statement, and served them on most but not all creditors. The debtor failed to serve Aria Oil Company, which is listed on the debtor's Schedule G as a party to a gasoline supply agreement with the debtor, effective from 2008 through 2018. The debtor was required to include Aria Oil Company on its master address list in this case, Fed. R. Bankr. P. 1007(a)(1), but failed to do so. As a result, Aria Oil Company has not received notice of this case.

In addition, the court's scheduling order expressly required service of the scheduling order and status conference statement on, among others, all parties to executory contracts and leases, and at the initial hearing, the court expressly stated the debtor would be required to serve <u>all</u> creditors. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties to an executory contract with the debtor. Thus, the debtor was required by the scheduling order and the court's direction at the initial hearing to serve Aria Oil Company, but failed to do so. The court intends either to convert this case or, if ample grounds are provided, to continue the status conference one more time and require service on Aria Oil Company.

The court will hear the matter.

33. 14-27541-D-7 JAMES TEETERS
PLC-3

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
12-16-14 [33]

Final ruling:

This is the debtor's motion to convert this chapter 7 case to a chapter 13 case. The motion will be denied for the following reasons. First, the moving party served the motion, notice of hearing, and supporting declaration only 26 days prior to the hearing date, rather than 28 days, as required by LBR 9014-1(f)(1) for a notice of the sort given here, purporting to require the filing of written opposition 14 days prior to the hearing date. Second, the "attached list" referred to in the proof of service is not attached. Instead, attached to the proof of service are copies of the notice of hearing, motion, and supporting declaration. Because the list of the parties served is not attached, the court cannot determine whether all parties required to be served were served and at the required addresses.

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

34. 14-31147-D-7 JAN NORMAN
HDR-1

CONTINUED MOTION TO COMPEL ABANDONMENT
11-24-14 [9]

35. 09-29162-D-11 SK FOODS, L.P.
SH-308

MOTION TO EXTEND TIME
12-23-14 [5453]

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

36. 14-28581-D-7 ROBERT/MARGARET WEBER
CJY-1

MOTION TO AVOID LIEN OF CACH LLC
12-24-14 [22]

37. 14-28581-D-7 CJY-2 — ROBERT/MARGARET WEBER — MOTION TO AVOID LIEN OF TCF EQUIPMENT FINANCE, INC. 12-24-14 [28]

38. 14-28581-D-7 CJY-3 — ROBERT/MARGARET WEBER — MOTION TO AVOID LIEN OF IMAGING FINANCIAL SERVICES, INC. 12-24-14 [34]

39. 14-28581-D-7 CJY-4 — ROBERT/MARGARET WEBER — MOTION TO AVOID LIEN OF TRADE ASSOCIATION, INC. 12-24-14 [40]

40. 14-28581-D-7 CJY-5 — ROBERT/MARGARET WEBER — MOTION TO AVOID LIEN OF ROLLING GREENS ESTATES, LLC 12-24-14 [46]

Final ruling:

This is the debtors' motion to avoid a judicial lien. The motion will be denied because the moving parties failed to serve the holder of the lien. The motion names the judgment creditor as Rolling Greens Estates, LLC, and the moving parties served Rolling Greens Estates, LLC. However, the abstract of judgment gives the name of the judgment creditor as Northern California Collection Service, Inc., as "assignee of record." There is no indication an abstract of judgment was ever issued in favor Rolling Greens Estates, LLC; thus, there is no indication that entity ever held a judicial lien against the debtors' property. The moving papers do not mention Northern California Collection Service, Inc., and the moving parties did not serve that entity.

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

41. 14-25094-D-7 BRIAN PORTER

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BRIAN LEE PORTER AND/OR STIPULATION TO EXTEND DEADLINE
12-16-14 [68]

42. 14-31297-D-7 WESLEY MURRAY
HSB-1

MOTION TO VACATE DISMISSAL OF CASE
12-12-14 [18]

CASE DISMISSED 12/8/14

Tentative ruling:

This is the debtor's motion to vacate the December 8, 2014 order dismissing this case. The motion is brought based on an allegation of excusable neglect in that the debtor's counsel believed all the required documents had been timely filed, but in the upload of the documents to the court's ECF system, two of the required documents – the debtor's Statement of Financial Affairs and the attorney's Rule 2016(b) disclosure – were missing. The debtor's attorney testifies those two documents were prepared by the deadline for filing, December 1, 2014, but the transmission of the documents to the court was not successful. In her words, after she received notice that the case had been dismissed, she "checked [her] Bestcase log and documents [she] prepared and found that they were prepared and sent electronically, though the clerk could not find them." She has submitted as an exhibit a screen shot of the confirmation log produced by her Bestcase software, which she says shows the documents uploaded, including file size. The court has examined the screen shot, but does not find that it shows the documents that were uploaded.

The court has additional concerns. The debtor's attorney does not indicate why she failed to check the court's docket to ensure that all the required documents had been filed. Further, the schedules that <u>were</u> filed on time – the debtor's Schedules A through J – were not accompanied by a declaration of the debtor or otherwise verified by the debtor, as required by Fed. R. Bankr. P. 1008. Absent such verification, the schedules cannot be considered as filed, and the deadline to file them ran over a month ago. Finally, there is no evidence of service of this motion.

The court has no reason to doubt the debtor's attorney's testimony that it was through her error and through no fault of the debtor that the case was dismissed. The court has difficulty concluding, however, that the case was dismissed due to excusable neglect on the part of the debtor's attorney. Finally, although the motion refers to "[t]he harm to the Debtor of having his case dismissed," it does not indicate what that harm might be.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

43.	14-25146-D-7 RJ-3	GILBERT CHAVEZ	MOTION TO COMPEL ABANDONMENT 12-23-14 [35]