

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

January 8, 2014 at 10:00 a.m.

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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.	10-45605-D-7 DMW-4	HORSESHOE CANYON LODGING, INC.	MOTION FOR COMPENSATION FOR ZEZOFF, YUEN & CO., ACCOUNTANT(S), FEES: \$2,425.00, EXPENSES: \$35.0012-10-13 [181]
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**Final ruling:**

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

2.	13-32706-D-7 MDE-1 WELLS FARGO BANK, N.A. VS.	GARY/DAPHNE WOOD	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 11-15-13 [19]
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**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.

3. 13-34106-D-7 DANIEL GORDON MOTION TO DISMISS DUPLICATE  
SJS-2 CASE  
12-10-13 [14]

4. 13-29209-D-7 SUSAN SIX MOTION TO COMPEL ABANDONMENT  
CYB-1 12-10-13 [19]

**Final ruling:**

This is the debtor's motion to compel the trustee to abandon certain real property. The court is not prepared to consider the motion at this time because the moving party failed to serve the chapter 7 trustee, as required by Fed. R. Bankr. P. 6007(b) and 9014(b), and failed to serve the United States Trustee, as required by Fed. R. Bankr. P. 9034(k) and the United States Trustee Guidelines, Region 17, Guideline 1.1. The court will continue the hearing to January 22, 2014, at 10:00 a.m., the moving party to file a notice of continued hearing no later than January 8, 2014, and to serve it, together with the motion, supporting declarations, and exhibits, no later than January 8, 2014, on the chapter 7 trustee and the United States Trustee. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required). The moving party shall file a proof of service no later than January 10, 2014. The hearing will be continued by minute order. No appearance is necessary on January 8, 2014.

5. 13-35009-D-7 JESI SMITH MOTION FOR RELIEF FROM  
EJS-1 AUTOMATIC STAY  
TRI STAR REALTY, LLC VS. 11-26-13 [5]

**Final ruling:**

This is Tri Star Realty, LLC's (the "Movant") motion for relief from stay. The Movant asserts, and it is not disputed, that it owns the subject property and it initiated unlawful detainer proceedings pre-petition. Movant further asserts that as a result of this pre-petition unlawful detainer action the debtor only has a possessory interest in the property. Accordingly, cause exists for relief from stay under Bankruptcy Code § 362(d)(1).

As Movant has established that it owns the subject property and it initiated unlawful detainer proceedings pre-petition, and that the debtor has only a possessory interest in the property, relief from stay will be granted under Code § 362(d)(1). Further, the court will waive FRBP 4001(a)(3). This relief will be provided by minute order. No appearance is necessary.

6. 13-34115-D-7 DONALD BROWN MOTION FOR RELIEF FROM  
MJ-1 AUTOMATIC STAY  
FEDERAL NATIONAL MORTGAGE 11-22-13 [20]  
ASSOCIATION VS.

7. 12-26319-D-7 JEFFREY/DARYA EVANS MOTION TO COMPROMISE  
DMW-2 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH JEFFREY EVANS  
AND DARYA EVANS  
12-11-13 [31]

**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 (9<sup>th</sup> Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

8. 13-28020-D-7 ROGER/BONNIE TURNER MOTION TO EXTEND DEADLINE TO  
HSM-4 FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
11-22-13 [32]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to extend deadline to file a complaint objecting to discharge of the debtors is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to discharge of the debtors. Moving party is to submit an appropriate order. No appearance is necessary.

9. 13-33420-D-7 CONG TRAN AND PHUONG MOTION TO COMPEL ABANDONMENT  
DAT-1 HUYNH 11-21-13 [13]

**Final ruling:**

This is the debtors' motion to compel the trustee to abandon the debtors' business known as Magical Nails. The court is not prepared to consider the motion at this time because the moving parties failed to serve the motion in accordance with Fed. R. Bankr. P. 6007.

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

The court will continue the hearing to January 22, 2014, at 10:00 a.m., the moving parties to file a notice of continued hearing no later than January 8, 2014, and to serve it, together with the motion and supporting declaration, no later than January 8, 2014, on all creditors. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f) (2) (no written opposition required). The moving parties shall file a proof of service no later than January 10, 2014. The hearing will be continued by minute order. No appearance is necessary on January 8, 2014.

10.	13-20823-D-11	MELVIN/DARLENE SHIMADA	MOTION FOR COMPENSATION BY THE
	MHK-10		LAW OFFICE OF MEEGAN, HANSCHU
			AND KASSENROCK FOR DAVID L.
			FULTON, ACCOUNTANT(S), FEES:
			\$5,210.00, EXPENSES: \$0.00
			12-9-13 [262]

**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.

11.	13-35327-D-12	LAURA BRANDON	STATUS CONFERENCE RE: CHAPTER
			12 VOLUNTARY PETITION
			12-3-13 [1]

**Tentative ruling:**

This is the trustee's motion to employ Ken Turton, of Turton Commercial Real Estate, as his broker to value, market, and possibly list for sale certain property of the estate. The debtors have filed opposition to the motion. The hearing was continued to permit the moving party to file a supplemental declaration of Mr. Turton pursuant to Fed. R. Bankr. P. 2014(b), which the moving party has done. For the following reasons, the motion will be granted.

The debtors' objections are rejected. Some of their arguments pertain to other matters, including their motion to dismiss this case, which is on appeal, and other motions that have been filed in this case, the rulings on which are now final. The debtors' arguments that are unique to this motion are frivolous. They claim "Notice of Trustee Richards must have a motion for such important case of employment of Ken Turton as his trustee realtor. Trustee Richards did not submit any motion for this present case." Debtors' Opp., filed Dec. 5, 2013 ("Opp."), at 1:17-21. This appears to be a reference to the fact that the trustee entitled his motion an "application" rather than a "motion." "This is a purely semantic distinction" (Barrientos v. Wells Fargo Bank, N.A., 633 F.3d 1186, 1191 (9th Cir. 2011)), as the two words are "generally considered synonymous." Id. The debtors also complain that "Chengs must have more than 28 days to file and submit evidences and statements etc for an opposition for a motion." Opp. at 1:28-29. However, the court's local rules do not require 28 days' notice; 14 days' notice is sufficient for a motion to which no written opposition will be required. The trustee's notice of hearing complied with LBR 9014-1(d) (3) in that it stated that no party-in-interest would be required to file written opposition, and it complied with LBR 9014-1(f) (2) in that more than 14 days' notice was given.

The debtors have filed their own motion to vacate and set aside the hearing on the trustee's motion. (The debtors' motion is also on this calendar; it will be denied by minute order.) In that motion, the debtors claim the trustee dismissed this chapter 7 at the meeting of creditors on August 13, 2013, and that the trustee "reaffirmed his dismissal" of the case by requesting the debtors sign a statement affirming they did not have any pre-petition or post-petition financial counseling and did not receive any legal or professional assistance in filling out their bankruptcy documents. The debtors complain that the trustee neglected to submit the dismissal of the case to the judge presiding in the case. The court summarily dismisses this argument. It was not within the trustee's purview to dismiss this bankruptcy case, and he did not do so.

Finally, the debtors state that a court-appointed interpreter is required by the debtors for the hearing. They have cited no authority for the proposition that they have a right to a court-appointed interpreter, and the court is aware of none. The debtors may provide their own interpreter, who, if sworn to provide an accurate translation of the debtors and the court's questions and statements, may interpret for them at the hearing.

The court will hear the matter.

13. 06-22532-D-7 RIO MORALES CONTINUED MOTION FOR SUMMARY  
12-2587 DNL-1 JUDGMENT  
DIDRIKSEN V. LICHEN, INC. 9-16-13 [25]

**Final ruling:**

The hearing on this motion has been continued by order dated December 30, 2013 to January 22, 2014 at 10:00 a.m. No appearance is necessary on January 8, 2014.

14. 06-22532-D-7 RIO MORALES CONTINUED MOTION FOR SUMMARY  
12-2587 RSK-1 JUDGMENT  
DIDRIKSEN V. LICHEN, INC. 9-18-13 [32]

**Final ruling:**

The hearing on this motion has been continued by order dated December 30, 2013 to January 22, 2014 at 10:00 a.m. No appearance is necessary on January 8, 2014.

15. 13-24634-D-7 CATHERINE WILKIE MOTION FOR SUMMARY JUDGMENT  
13-2210 12-10-13 [19]  
WILKIE V. WILKIE

**Final ruling:**

The court finds that a hearing will not be helpful and is not necessary. This is the defendant's motion for summary judgment. The plaintiff has filed opposition. For the following reasons, the motion will be granted.

The court recognizes, with the plaintiff, that the defendant's motion is not procedurally correct in that the defendant did not file a statement of undisputed facts, as required by LBR 7056-1(a), and did not file copies of the evidentiary documents referred to in the moving papers, as required by the same rule. The plaintiff, however, has itemized the alleged facts as set forth in the defendant's declaration supporting the motion, and has indicated in his opposition the facts he admits and those that are disputed, just as he would have done if the defendant had filed a statement of undisputed facts. The plaintiff has also filed his own exhibits in opposition to the motion. The plaintiff does not indicate the absence of a statement of undisputed facts has prejudiced him in any way except that he was unable to reproduce the itemized facts in the missing statement of undisputed facts and to admit or deny them, as required by LBR 7056-1(b). As for the evidentiary documents, the defendant should have filed copies in support of her motion; however, the plaintiff filed copies as exhibits to his complaint, and has filed copies of additional documents in opposition to this motion. With one exception (see note 9 below), all the documents referred to by both parties are of record in this proceeding.<sup>1</sup> For these reasons, the court considers it appropriate to address the motion and opposition on their merits despite the motion's procedural defects, as permitted by Fed. R. Civ. P. 56(e)(3) and (f)(3), incorporated herein by Fed. R. Bankr. P. 7056.

The plaintiff opposes the motion on the ground there are numerous disputed material facts in this proceeding. The court disagrees, finding instead that the factual disputes are immaterial, and the material disputes go to solely to legal issues; namely, the correct interpretation of (1) the parties' Premarital Agreement, (2) a document subsequently issued by the state court in the parties' marital dissolution proceeding entitled Findings and Order After Hearing ("Findings and Order"), and (3) the parties' subsequent Marital Agreement, made an order of the state court in the dissolution 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 (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).

"When the moving party has carried its [initial] burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (footnote omitted; citations omitted). "A genuine dispute arises if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." California v. Campbell, 319 F.3d 1161, 1166 (9th Cir. 2003). A scintilla of evidence or evidence that is merely colorable or not significantly probative does not present a genuine issue of material fact." United Steel Workers of America v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir. 1989).

The present dispute arose as follows. The plaintiff and defendant signed a Premarital Agreement in 2004, and were married shortly thereafter.<sup>2</sup> Among other things, the agreement provided: "If the parties seek a legal separation or dissolution of marriage, each of the parties hereby waives any right to spousal support, and each releases the other from any and all claims for spousal support or maintenance of any kind." Plaintiff's Complaint, filed June 24, 2013 ("Complaint"), Ex. B (DN 7), ¶ 19. The agreement was signed by the parties and by separate attorneys for each.

In early January 2008, the parties separated,<sup>3</sup> and on March 12, 2008, the defendant filed a motion in the state court requesting an award of child support, spousal support, and attorney's fees. Following a hearing at which both parties were represented by attorneys, the court issued its Findings and Order, in which it ordered the plaintiff to pay the defendant (1) child support of \$1,165 per month; (2) temporary spousal support of \$1,840 per month beginning March 12, 2008 until further court order, and (3) attorney's fees of \$5,000, payable at \$1,000 per month. The Findings and Order included the following statement: "Temporary spousal support is ordered without prejudice to determination of the validity of the parties' pre-marital agreement." Plaintiff's Ex. D, filed Dec. 24, 2013 (DN 28), Spousal, Partner or Family Support Order Attachment, ¶ 10. Neither party pursued the issue of the validity of the Premarital Agreement in the state court.

The plaintiff made payments of spousal support to the defendant pursuant to the

Findings and Order. In September of 2008, the parties discussed reconciliation,<sup>4</sup> and the parties and attorneys representing each of them signed a Marital Agreement, which was thereafter signed by the state court judge and made an order of the court. The Marital Agreement contained the following statements:<sup>5</sup>

I. The Prenuptial Agreement . . . is acknowledged by each party. [The parties] agree that all terms of that Prenuptial Agreement shall remain in full force and effect except where they are in conflict with this Marital Agreement, and if any are in conflict with this Marital Agreement, then the terms of this Marital Agreement shall control and take precedence over terms in the Prenuptial Agreement. The parties hereby waive any defect in the negotiation and execution of the Prenuptial Agreement referenced above. [. . .]

IV. The parties have discussed a possible reconciliation between them and in anticipation of that reconciliation have negotiated this Marital Agreement. In view of that anticipated reconciliation[,] child support and spousal support currently ordered by the court shall terminate on October 1, 2008. [The parties] each shall be responsible for all debts that she and he have incurred respectively during the period February 10, 2008 to September 1, 2008.

Plaintiff's Ex. E, filed Dec. 24, 2013, ¶¶ I, IV. The agreement contains the name and address of the plaintiff's attorney in the upper left corner; the defendant testifies, and the plaintiff does not dispute, that the plaintiff himself prepared the agreement.

In this adversary proceeding, the plaintiff contends he is a creditor of the defendant by virtue of the Findings and Order, under which he claims he paid the defendant a total of \$22,080 in spousal support. The plaintiff's position is difficult to grasp at first, since the Findings and Order ordered him to pay spousal support to the defendant; it did not order the defendant to pay anything to the plaintiff. What the plaintiff claims, however, is that he has a right to be reimbursed by the defendant for the spousal support he paid her pursuant to the Findings and Order; he also seeks a determination from this court that the "debt" consisting of the defendant's alleged obligation to reimburse him is nondischargeable, pursuant to § 523(a)(2), (6), and (15).

The plaintiff's theories rest on a false premise: that the parties' Premarital Agreement divested the state court of jurisdiction to award spousal support. Thus, the complaint contains the following assertions:<sup>6</sup>

- Despite a Pre-Nuptial Agreement between Plaintiff and Defendant . . . wherein, at Item 19,<sup>7</sup> Page 13, the jurisdiction of the Superior Court of California to award spousal support to either Plaintiff or Defendant was terminated, Defendant declared under penalty of perjury that said Pre-Nuptial Agreement was not valid and enforceable and requested an order for spousal support from the Placer County Superior Court . . . .

- Plaintiff maintains that he [made the payments] as a result of an Order of the Court [the Findings and Order] in the face of the Pre-Nuptial Agreement terminating the Court's jurisdiction to make such an order . . . .

- [In seeking an award of spousal support,] Defendant denied the

existence of a of a [sic] valid and enforceable Pre-Nuptial Agreement between Plaintiff and Defendant which terminated the Superior Court's jurisdiction to make an award for spousal support.

- . . . Defendant . . . stipulated in writing [in the Marital Agreement] to the existence, validity and enforceability of a Pre-Nuptial Agreement which fully terminated the Superior Court's jurisdiction to award spousal support to Defendant.

- Defendant became indebted to Plaintiff as a result of a spousal support order entered by the Superior Court of California, County of Placer, which support was ordered payable by Plaintiff to Defendant in the face of a valid and enforceable Pre-Nuptial Agreement. As such, the debt to Plaintiff is not spousal support payable as contemplated by 11 USC Sec 523(a)(5), but the repayment of spousal support ordered to be paid in excess of the jurisdiction of the Court to order such payment of spousal support.

Complaint, at ¶¶ 6, 8, 10, 12, 15.

The problem with this theory is simple and obvious: the Premarital Agreement did not terminate the state court's jurisdiction to award spousal support. The agreement did not purport to do so, nor could it have. By statute, there is a variety of circumstances in which a premarital agreement is not enforceable, including that (1) the party against whom it is sought to be enforced did not sign it voluntarily, and (2) the agreement was unconscionable when made and the party was not provided a fair, reasonable, and full disclosure of or did not have adequate knowledge of the property or financial obligations of the other party. Cal. Fam. Code § 1615(a). In fact, there is a presumption that a premarital agreement was not executed voluntarily. In re Marriage of Cadwell-Faso & Faso, 191 Cal. App. 4th 945, 949 (2011), citing Cal. Fam. Code § 1615(c). The party seeking to enforce the agreement has the burden of presenting evidence sufficient for the court to make five specific findings; if that party does not meet his or her burden, "the premarital agreement must be held unenforceable as having been involuntarily executed." Id. at 956 (emphasis in original).<sup>8</sup> The fact that the defendant was represented by her own counsel when she signed the Premarital Agreement is not in itself determinative.

Any provision in a premarital agreement regarding spousal support, including, but not limited to, a waiver of it, is not enforceable if the party against whom enforcement of the spousal support provision is sought was not represented by independent counsel at the time the agreement containing the provision was signed, or if the provision regarding spousal support is unconscionable at the time of enforcement. An otherwise unenforceable provision in a premarital agreement regarding spousal support may not become enforceable solely because the party against whom enforcement is sought was represented by independent counsel.

Cal. Fam. Code § 1612(c). Finally, "[t]he rules applicable to the interpretation of contracts have been applied generally to premarital agreements." In re Marriage of Bonds, 24 Cal. 4th 1, 13 (2000). The plaintiff's underlying premise in this case - that the execution of the Premarital Agreement terminated the state court's jurisdiction to award spousal support - contravenes these statutes and cases; in short, it is simply wrong.

The plaintiff's nondischargeability theories depend entirely on that incorrect premise - that the state court did not have jurisdiction to award spousal support; thus, they fail as well. First, to prevail on his § 523(a)(2) claim, the plaintiff must prove, among other things, that the defendant made a statement to the plaintiff that the defendant knew was false at the time she made it. Jung Sup Lee v. TCAST Communs., Inc. (In re Jung Sup Lee), 335 B.R. 130, 136 (9th Cir. BAP 2005). The plaintiff's only allegations of a false statement by the defendant are that the "defendant declared under penalty of perjury that said Pre-Nuptial Agreement was not valid and enforceable and requested an order for spousal support from the Placer County Superior Court" (Complaint, at 2:23-25), that when she filed her motion for support, she "[swore] under penalty of perjury that the information contained in said Motion was true and correct," and that she "denied the existence of a valid and enforceable Pre-Nuptial Agreement between Plaintiff and Defendant which terminated the Superior Court's jurisdiction to make an award for spousal support." Complaint, at 3:28-4:5.<sup>9</sup> As already discussed, the Premarital Agreement did not terminate the state court's jurisdiction to award spousal support; further, there has been no finding by any court that the parties' Premarital Agreement was valid and enforceable, and as already seen, there are a variety of reasons it might have been found invalid and/or unenforceable. Thus, the defendant simply did not make a false statement.

Further, assuming for the sake of argument only that the Premarital Agreement was valid and enforceable, and that the defendant falsely denied that in her motion for an award of support, the plaintiff would be unable to prove at least two of the other required elements for a § 523(a)(2)(A) claim: (1) that he relied on the defendant's false statement (that is, that he relied on her representation that the Premarital Agreement was not valid and enforceable), and (2) that he sustained loss or damage as a proximate result of her representation that the Premarital Agreement was not valid and enforceable. See Jung Sup Lee, 335 B.R. at 136 [elements of a § 523(a)(2)(A) claim]<sup>10</sup> The plaintiff does not claim he relied on the defendant's representation in any way; indeed, at all times, he asserted the validity of the Premarital Agreement<sup>11</sup> Although he claims the defendant asserted the invalidity of the Premarital Agreement "in order to coerce the [state] court into awarding her spousal support" (Plaintiff's Opp., filed Dec. 24, 2013 ("Opp."), at 9:7-8), he does not nor could he reasonably suggest the state court was actually coerced or misled by the defendant.

In fact, the state court acknowledged the existence of the Premarital Agreement when it added the caveat that its award of temporary spousal support was "without prejudice to determination of the validity of the parties' pre-marital agreement." The court at that time was, in the words of the plaintiff's attorney at the hearing, "not prepared to rule on the validity of the Prenuptial Agreement . . . ." R. Johnson Decl., Complaint, Ex. C, at 1:25-26. The plaintiff claims the state court judge verbally "warned Defendant that, if her challenge to the Pre-Nuptial Agreement was not recognized, she would be required to reimburse Plaintiff for the spousal support received." Complaint, at 3:3. Phrased another way, the plaintiff claims the judge "stated that, if the Pre-Nuptial Agreement was established and deemed enforceable, Defendant would have to repay all spousal support sums to Plaintiff." Id. at 4:12-14. At this stage, the statement is hearsay; however, assuming for the sake of argument only that the judge made that statement, the key word is "if." As discussed, neither party sought a determination from the state court as to the validity of the Premarital Agreement, and it was never "established and deemed enforceable." Thus, the defendant's alleged duty to reimburse the plaintiff never arose.

Finally, the plaintiff claims the Premarital Agreement was established and deemed enforceable by the defendant herself when she signed the Marital Agreement. Thus, the plaintiff makes these assertions:

- Prior to any hearing on the validity of the Pre-Nuptial Agreement, Defendant, personally, and by and through her Dissolution of Marriage counsel [name], stipulated to the validity of the Pre-Nuptial Agreement.

- [In the Marital Agreement], Defendant, individually, and by and through her counsel [name], stipulated in writing as to the existence, validity and enforceability of a Pre-Nuptial Agreement which fully terminated the Superior Court's jurisdiction to award spousal support to Defendant.

Complaint, ¶¶ 7, 12. As already seen, the Marital Agreement did no such thing. Moreover, the defendant did not stipulate (nor, under the Family Code sections cited above, could she have stipulated) to the validity and enforceability of the Premarital Agreement. In ¶ I of the Marital Agreement, quoted above, the defendant merely "acknowledged" the Premarital Agreement, "waived any defect" in its negotiation and execution, and agreed that all terms of that agreement "shall remain in full force and effect except where they are in conflict with this Marital Agreement," in which case the Marital Agreement would control. Indeed, as the defendant contends, there was a significant conflict between the Premarital Agreement and the Marital Agreement - in the Premarital Agreement, the parties waived the right to spousal support, whereas in the Marital Agreement, the parties agreed that "child support and spousal support currently ordered by the court shall terminate on October 1, 2008." By the express terms of the Marital Agreement, the latter provision controls. Further, absent from the Marital Agreement is any suggestion that the support payments, either child support or spousal support, already made pursuant to the Findings and Order would be "unwound"; that is, that the defendant would be responsible to reimburse the plaintiff for them. Finally, if that were not enough, basic principles of contract interpretation, which apply here (Marriage of Bonds, 24 Cal. 4th at 13), would not support the conclusion that the defendant's acknowledgment of the Premarital Agreement or her waiver of any defect in its negotiation or execution gave rise to an obligation to reimburse the plaintiff for support payments already made - and made pursuant to a valid and binding court order.

The bottom line here is that the plaintiff was and is unhappy with the state court's Findings and Order, which required him to pay temporary spousal support to the defendant, as modified by the parties' subsequent Marital Agreement, made an order of the court, which terminated the spousal support award as of October 1, 2008, with no provision, either explicit or implied, that the defendant would reimburse the plaintiff for the payments already made. However, both orders were final and binding; neither was ever challenged by the plaintiff until now. The defendant is correct that this adversary proceeding is nothing more than an impermissible collateral attack on final and binding court orders.

A few final points. The plaintiff's second and third claims for relief, under § 523(a)(6) and (a)(15), respectively, fail for the same reason as his § 523(a)(2) claim: they recite nothing other than the plaintiff's conclusions, rejected above, that the defendant falsely represented to the state court that there was no valid and enforceable premarital agreement and that the provision in the Findings and Order requiring the plaintiff to pay spousal support was beyond the state court's jurisdiction. The plaintiff also contends the defendant listed on her Schedule F in

the underlying bankruptcy case a debt to the plaintiff in an unstated amount arising out of "sums owing to him including attorney fees in divorce." The defendant, however, listed the debt as disputed; thus, the listing is not an acknowledgment of a debt, for estoppel purposes or anything else.

Next, the plaintiff states the defendant voluntarily entered into the Premarital Agreement, wherein she knowingly waived the right to request spousal support. Those would arguably be factual disputes precluding summary judgment, but for the fact that the plaintiff had the opportunity to present those disputes to the state court for determination, but he did not do so. Those issues were subsumed in the court's Findings and Order and the order approving the Marital Agreement; they may not be revisited here.

The plaintiff also complains the defendant "sought the powers of the court to compel Plaintiff to pay spousal support under the threat of the State's power to suspend both his Drivers License and General Contractor's License, and ultimately incarcerate his person should he be found in contempt." Opp. at 6:17-19. As discussed above, the plaintiff had the opportunity to persuade the state court that the defendant had no right to spousal support. To the extent the court was not prepared to rule on the issue at the initial hearing, which generated the Findings and Order, the plaintiff had every opportunity to seek such a ruling later; indeed, the court in essence invited him to do so when it added that "[t]emporary spousal support is ordered without prejudice to determination of the validity of the parties' pre-marital agreement." That the plaintiff was subject to being found in contempt if he failed to make the payments ordered by the court was a consequence of his own making.

Rather than seeking a court order as to the validity of the Premarital Agreement, the plaintiff chose to negotiate and draft the Marital Agreement, in which he had the defendant acknowledge the Premarital Agreement, waive any defect in its negotiation and signing (which suggests a recognition the defendant might have claimed such a defect), and agree that it would remain in full force and effect except where in conflict with the Marital Agreement. He chose to draft the Marital Agreement to provide that support under the Findings and Order would terminate on October 1, 2008, and chose to omit any mention of a duty on the part of the defendant to reimburse him for the payments already made.

Finally, the plaintiff purports to tie the support obligation to the provision in the Marital Agreement that the parties would each be responsible for the debts he or she had incurred between February 10, 2008 and September 1, 2008. "This [time period] coincides almost exactly with the period of time Plaintiff paid spousal support to Defendant, March 12, 2008, through September 30, 2008." Opp. at 8:14-16. Thus, in the plaintiff's view, "the debt owed Plaintiff by Defendant [that is, the alleged reimbursement obligation] was specifically provided for by the terms that 'each party shall be responsible for all debts that she and he have incurred respectively during the period February 10, 2008 to September 1, 2008.'" Id. at 8:20-24. This argument borders on the disingenuous. It is commonly understood in family law matters that the obligation of one spouse to help support the other is an entirely different matter from the parties' division of assets and debts. The sentence in the Marital Agreement meant nothing more than that the debts each party incurred during that time period would remain with him or her: it did not purport to define those debts or to create on the part of the defendant an obligation to reimburse the plaintiff for the support he paid her during that time.

For the reasons stated, the court concludes that there are no genuine issues of

material fact on which the plaintiff, if he persuaded the court, would be entitled to a judgment against the defendant on any obligation, or on which he would be entitled to a determination that such any judgment against her should be nondischargeable under § 523(a)(2), (6), or (15). The defendant is entitled to judgment as a matter of law. Accordingly, the motion will be granted by minute order and judgment will be entered in favor of defendant. No appearance is necessary.

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1 The court notes also that the plaintiff's presentation has not been procedurally flawless - his exhibits were filed individually rather than as an exhibit document, and were filed without the caption, index, and numbering required by Guidelines 4 and 6 of the court's Revised Guidelines for the Preparation of Documents, EDC 2-901 (Rev. 12/29/08), as required by LBR 9004-1(a).

2 The parties dispute the circumstances surrounding the signing of the agreement; those issues, however, are immaterial.

3 The parties dispute the circumstances surrounding their separation; as with the negotiation and signing of the Premarital Agreement, those issues are immaterial.

4 The parties dispute who wanted the reconciliation; as with the other issues mentioned above, these are immaterial.

5 The Marital Agreement creates some confusion in that it refers to a "Prenuptial" Agreement as opposed to a "Premarital" Agreement. There was but a single agreement between the parties before they married - the agreement they entitled Premarital Agreement; it is mistakenly referred to in the Marital Agreement as a Prenuptial Agreement.

6 As in the Marital Agreement, the plaintiff's complaint refers to the Premarital Agreement as a Pre-Nuptial Agreement.

7 The full text of ¶ 19 is this:

If the parties seek a legal separation or dissolution of marriage, each of the parties hereby waives any right to spousal support, and each releases the other from any and all claims for spousal support or maintenance of any kind. Each party acknowledges and agrees that the waiver of spousal support set forth in this paragraph is made in consideration of their mutual promises, conditions and agreements contained in this Agreement. The parties have been advised of their rights regarding spousal support by their independent counsel, and voluntarily waive their right to postdissolution spousal support.

8 Thus, "it shall be deemed that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following:" (1) The party against whom enforcement is sought was represented by independent legal counsel or expressly waived such representation in a separate writing; (2) that party had not less than seven calendar days to seek independent legal counsel; (3) that party, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up; and (4) the agreement was not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement. § 1615(c) (emphasis added). In determining whether a premarital

agreement was executed voluntarily, the court may consider "[a]ny other factors the court deems relevant." § 1615(c) (5).

9 The defendant's motion filed in the state court is not in the record; the court will assume, however, taking all the plaintiff's allegations as true, that the defendant swore in the motion that there was no valid and enforceable prenuptial agreement between the parties.

10 In fact, the plaintiff's complaint does not allege either reliance or loss or damage as a proximate result of the defendant's representation. Thus, the complaint would be subject to dismissal for failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b), if the court were to deny summary judgment.

11 The plaintiff was represented by his own counsel at the hearing on the defendant's motion for support. That counsel has testified in support of the plaintiff's complaint in this proceeding that the plaintiff opposed the motion "because each party had signed a Prenuptial Agreement waiving post separation spousal support." R. Johnson Decl., Complaint, Ex. C, at 1:24-25.

16. 13-31634-D-7 DELIA/GERARDO MERCADO MOTION TO EMPLOY WEST AUCTION,  
DMW-3 INC. AS AUCTIONEER(S)  
12-4-13 [23]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ West Auction, Inc. as auctioneer is supported by the record. As such the court will grant the motion to employ West Auction, Inc. as auctioneer. Moving party is to submit an appropriate order. No appearance is necessary.

17. 13-34135-D-7 BALBIR SANDHU MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
11-1-13 [5]

18. 10-47536-D-7 DOUGLAS KIRKWOOD CONTINUED MOTION TO ABANDON  
CDH-1 11-20-13 [49]

**Final ruling:**

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to abandon real and personal property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned. Moving party is to submit an appropriate order. No appearance is necessary.

19. 10-47536-D-7 DOUGLAS KIRKWOOD CONTINUED MOTION TO COMPROMISE  
CDH-2 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH DOUGLAS B.  
KIRKWOOD  
11-20-13 [54]

**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 (9<sup>th</sup> 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.

20. 13-33641-D-7 TONYA SANCHEZ MOTION FOR RELIEF FROM  
JBC-1 AUTOMATIC STAY AND/OR MOTION  
ALMA PORTILLO VS. FOR RETROACTIVE ANNULMENT  
12-9-13 [17]

21. 13-34341-D-7 NOEMI DELGADO MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
11-8-13 [5]

22. 12-38243-D-7 MARY O'NEAL MOTION FOR COMPENSATION FOR  
SMD-4 GABRIELSON & COMPANY,  
ACCOUNTANT(S), FEES: \$1,625.00,  
EXPENSES: \$129.92  
12-2-13 [53]

**Final ruling:**

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

23. 13-24144-D-7 THE CALIFORNIA PRIMARY OBJECTION TO CLAIM OF DAMERON  
CAH-1 CARE MEDICAL GROUP, INC. HOSPITAL ASSOCIATION, CLAIM  
NUMBER 5  
11-8-13 [26]

**Final ruling:**

The court finds that a hearing will not be helpful and is not necessary. This is the debtor's objection to the claim of Dameron Hospital Association ("Dameron"), Claim No. 5 on the court's claims register. Dameron has filed opposition to the objection. For the following reason, the objection will be overruled.

Dameron's claim is in the amount of \$440,660.28; the proof of claim asserts that the entire amount is secured. The debtor objects to the claim on four grounds: that (1) the credit agreement attached to Dameron's proof of claim is between Dameron and The California Hospitalist Physicians, Inc. ("CHP"), and not between Dameron and the debtor; (2) only a portion of the claim; namely, \$40,418, is secured, and the balance is unsecured; (3) the proof of claim was filed late; and (4) the proof of claim improperly includes alter ego allegations against the debtor's principal, Otashe Nyoku Golden ("Golden"). Dameron's response (1) refers to several different agreements under which Dameron claims the debtor is liable on the claim; (2) purports to demonstrate that the entire amount is secured; (3) claims the late filing of its proof of claim is irrelevant, since its claim is secured and "rides through" the bankruptcy unaffected; and (4) quotes at length from a state court pleading in which it made a series of alter ego allegations against the debtor, CHP, and Golden.

The motion will be denied because the debtor has failed to demonstrate that it has standing to object to a claim filed in this case. "Standing is a jurisdictional requirement which is open to review at all stages of litigation. . . . The burden to establish standing remains with the party claiming that standing exists." Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (9th Cir. BAP 1997). In general, "'debtors only have standing to object to claims where there is 'a sufficient possibility' of a surplus to give them a pecuniary interest.'" Law v. Golden (In re Eisen), 2007 Bankr. LEXIS 4864, at \*21, quoting Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 429 (9th Cir. BAP 2005); see also In re Sandwich Islands Distilling Corp., 2009 Bankr. LEXIS 3692, at \*7-8 (Bankr. D. Haw. 2009) [chapter 7 debtor has standing to object to claim only if it retains a pecuniary interest in the estate]; Dellamarggio v. B-Line, LLC (In re Barker), 306 B.R. 339, 346 (Bankr. E.D. Cal. 2004) [chapter 7 debtors typically lack standing to object to claims because they have no economic interest in whether the claim is allowed or disallowed].

The trustee in this case has issued a notice to file claims due to the possible recovery of assets. However, based on the debtor's schedules, there is no reason to suppose the recovery, if any, will be sufficient to pay all creditors and return a surplus to the debtor. The debtor scheduled the values of all of its assets (none of which was listed as having an unknown value) at \$14,576. It listed Dameron as having a secured claim for \$40,418 against assets worth \$4,520, and it scheduled general unsecured claims totaling \$420,003. Of these, the debtor listed Dameron as having general unsecured claims (not disputed) totaling \$330,000. In fact, the debtor appears to admit in its objection to Dameron's claim that Dameron has an unsecured claim for \$330,000; apparently, the debtor's only basis for objecting to that portion of the claim is that the proof of claim was filed late. Pursuant to §

726(a) (3) and (6) of the Bankruptcy Code, Dameron's late claim would have to be paid in full before any surplus would be returned to the debtor. Given these numbers, it seems highly unlikely there will be a surplus available for the debtor in this case; for that reason, the objection will be overruled.

The court recognizes that the debtor and the trustee in this case have entered into a stipulation in which the trustee states he does not oppose the filing of an objection to Dameron's claim. (The recitals in the stipulation state that the debtor "seeks permission" from the trustee to file the objection.) This is not akin to the situation where, for example, a trustee stipulates that a creditor may pursue an avoidance action on the trustee's behalf. In fact, the trustee does not purport to confer standing on the debtor to pursue this claim objection, and the debtor does not contend its prosecution of this claim objection is somehow for the benefit of the estate as a whole or for the creditor body. Finally, the debtor has cited no authority for the proposition that the stipulation somehow conferred standing on the debtor to object to the claim. For the reasons stated, the objection will be overruled by minute order. No appearance is necessary.

24. 10-42050-D-7      VINCENT/MALANIE SINGH      MOTION TO AMEND COMPLAINT  
12-2489      CDH-1      12-11-13 [77]  
BURKART V. XIE

**Final ruling:**

The hearing on this motion is continued to January 22, 2014 at 10:00 a.m. No appearance is necessary.

25. 11-33153-D-7      KENNETH EDMONSON AND      MOTION TO REDEEM  
TBK-3      YESSENIA GONZALEZ      12-11-13 [103]

**Final ruling:**

This is the debtors' motion to redeem a 2004 Nissan 350 Z from the lien of Capital One Auto Finance ("Capital One"). The motion will be denied for the following reasons. First, § 722 of the Bankruptcy Code permits a debtor to redeem certain personal property if the property has been exempted or abandoned. The motion states that the vehicle has been claimed as exempt; it even states that a copy of the debtors' amended Schedule C is attached to the motion as an exhibit. However, although the exhibit does purport to be an amended Schedule C on which the vehicle is listed, that document has never been filed with the court, and it is not verified by the debtors, as required by Fed. R. Bankr. P. 1008. The court has examined the debtors' original and two amended Schedules C filed in this case - none lists the 2004 Nissan.

Second, the notice of hearing states that the debtors have filed papers to value the collateral held by Nissan Motor Acceptance Corporation, whereas this is a motion to redeem personal property from a lien of Capital One Auto Finance.

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

26. 11-33153-D-7 KENNETH EDMONSON AND MOTION TO REDEEM  
TBK-4 YESSSENIA GONZALEZ 12-11-13 [109]

**Final ruling:**

This is the debtors' motion to redeem a 2005 Nissan Altima from the lien of AmeriCredit Financial Services ("AmeriCredit"). AmeriCredit has filed opposition, contending the debtors have not shown their value to be the appropriate value for redemption of the vehicle. However, the motion will be denied for the following reason. Section 722 of the Bankruptcy Code permits a debtor to redeem certain personal property if the property has been exempted or abandoned. The motion states that the vehicle has been claimed as exempt; it even states that a copy of the debtors' amended Schedule C is attached to the motion as an exhibit. However, although the exhibit does purport to be an amended Schedule C on which the vehicle is listed, that document has never been filed with the court, and it is not verified by the debtors, as required by Fed. R. Bankr. P. 1008. The court has examined the debtors' original and two amended Schedules C filed in this case - none lists the 2005 Nissan. To the extent the parties can agree on a price and wish to enter into an agreement for redemption of the vehicle, the court would not stand in their way. However, the motion is brought pursuant to § 722 of the Code, whereas the debtors have not met the requirements for application of that statute.

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

27. 12-38757-D-7 JUANITA BANNER MOTION TO WAIVE FILING FEE  
12-4-13 [35]

28. 13-34261-D-7 LILLIBETH CAMPOS MOTION FOR WAIVER OF THE  
CHAPTER 7 FILING FEE OR OTHER  
FEE  
11-6-13 [5]

29. 13-34663-D-7 RICHARD GJONOVICH MOTION TO DISMISS CASE  
11-25-13 [11]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to dismiss case is supported by the record. As such the court will grant the motion and the case will be dismissed by minute order. No appearance is necessary.

30. 13-28369-D-7 EDWIN GERBER MOTION FOR RELIEF FROM  
SAC-1 AUTOMATIC STAY  
DEWALD EQUIPMENT LEASING VS. 12-6-13 [62]
31. 12-20571-D-7 PRITPAUL SAPPAL MOTION TO COMPEL ABANDONMENT  
12-3-13 [107]
32. 13-23371-D-11 JUAN/MARGARITA RAMIREZ CONTINUED MOTION TO VALUE  
TCS-7 COLLATERAL OF THE BANK OF NEW  
YORK MELLON  
11-13-13 [107]
33. 13-33674-D-7 CAROL BURGESS MOTION FOR RELIEF FROM  
RCO-1 AUTOMATIC STAY AND/OR MOTION  
CENTRAL MORTGAGE COMPANY VS. FOR ADEQUATE PROTECTION  
11-25-13 [24]

**Final ruling:**

This matter is resolved without oral argument. This is Central Mortgage Company'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.

34. 13-33276-D-7 CALVIN TANG AND ANNA LOR MOTION TO AVOID LIEN OF ASSET  
CJY-1 ACCEPTANCE, LLC  
12-11-13 [15]

**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.

35. 13-33276-D-7 CALVIN TANG AND ANNA LOR MOTION TO AVOID LIEN OF CACH,  
CJY-2 LLC  
12-11-13 [21]

**Final ruling:**

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

36. 11-24177-D-7 SCOTT/ROBIN PAYTON MOTION TO EMPLOY HUISMAN  
ICE-1 AUCTIONS, INC. AS AUCTIONEER(S)  
11-26-13 [100]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ Huisman Auctions, Inc. as auctioneer is supported by the record. As such the court will grant the motion to employ Huisman Auctions, Inc. as auctioneer. Moving party is to submit an appropriate order. No appearance is necessary.

37. 12-39878-D-7 DAVID/RENEE SMITH MOTION TO EXTEND DEADLINE TO  
LR-4 FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR AND/OR  
MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGEABILITY OF A DEBT  
11-12-13 [134]

**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 further extension of time for filing complaint objecting to debtors' discharge under 11 U.S.C. § 727 and dischargeability of a debt under 11 U.S.C. § 523 is supported by the record. As such the court will grant the motion for further extension of time for filing complaint objecting to debtors' discharge under 11 U.S.C. § 727 and dischargeability of a debt under 11 U.S.C. § 523. Moving party is to submit an appropriate order. No appearance is necessary.

38. 13-31680-D-7 JUAN/LETICIA URCIAGA MOTION FOR RELIEF FROM  
PD-1 AUTOMATIC STAY  
CENTRAL MORTGAGE COMPANY VS. 11-22-13 [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. 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.

39. 13-30483-D-7 GARY/SHARON SPARKS MOTION FOR CONTEMPT  
SLF-3 11-15-13 [55]

40. 13-30483-D-7 GARY/SHARON SPARKS MOTION TO EXTEND DEADLINE TO  
SLF-4 FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
11-15-13 [49]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to extend deadline to file a complaint objecting to discharge of the debtors is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to discharge of the debtors. Moving party is to submit an appropriate order. No appearance is necessary.

41. 13-32891-D-7 TIMOTHY GRAVES OBJECTION TO DEBTOR'S CLAIM OF  
BLG-1 EXEMPTIONS  
12-5-13 [12]

42. 12-33698-D-11 2 ANTIOCH, LLC CONTINUED MOTION FOR SUMMARY  
12-2705 JUDGMENT OR FOR PARTIAL SUMMARY  
2 ANTIOCH, LLC V. ANTIOCH JUDGMENT  
LOAN, LLC 9-27-13 [38]

**This matter will be called no earlier than 10:30 a.m.**

43. 12-33698-D-11 2 ANTIOCH, LLC CONTINUED MOTION TO DISMISS  
12-2705 DTK-2 ADVERSARY PROCEEDING  
2 ANTIOCH, LLC V. ANTIOCH 11-4-13 [75]  
LOAN, LLC

**This matter will be called no earlier than 10:30 a.m.**

44. 12-33698-D-11 2 ANTIOCH, LLC CONTINUED MOTION TO DISMISS  
DTK-2 CASE  
11-4-13 [142]

**This matter will be called no earlier than 10:30 a.m.**

45. 11-48899-D-7 WILLIAM PATTISON MOTION TO SELL  
SLF-3 12-12-13 [33]

**Tentative ruling:**

This is the trustee's motion to sell the debtor's interest in a limited partnership to the debtor. The motion was noticed under 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 court is inclined to deny the motion for the following reasons. First, the moving party served the debtor at an old address and not at his new address as shown on a change of address filed August 23, 2013. Second, although the motion states

that the sale is subject to overbidding at the hearing, the notice of hearing, which is the only document served on creditors, does not mention overbidding.

For these reasons, the court intends to deny the motion. In the alternative, the court will continue the hearing to allow the moving party to address these issues. The court will hear the matter.

46. 11-48899-D-7 WILLIAM PATTISON MOTION TO ABANDON  
SLF-4 12-12-13 [38]

47. 13-21199-D-7 JAMES SCOTT CONTINUED MOTION TO COMPROMISE  
DNL-11 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH BANK OF AMERICA,  
N.A.  
11-20-13 [221]

**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 (9<sup>th</sup> 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.

48. 13-33102-D-11 DBS AIR, LLC CONTINUED MOTION TO DISMISS  
WW-4 CASE  
11-22-13 [90]

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

49. 13-33102-D-11 DBS AIR, LLC CONTINUED MOTION TO DISMISS  
JRD-2 CASE  
10-16-13 [17]

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

50. 13-35310-D-7 JARET/KRISTI GHENT MOTION FOR RELIEF FROM  
WAJ-1 AUTOMATIC STAY  
BIHAI PENG VS. 12-20-13 [19]

**Final ruling:**

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f) (2). However, the debtors failed to list subject property on their Statement of Intentions and the trustee has filed a statement of non-opposition. 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.

51. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO SET ASIDE  
12-26-13 [183]

**Final ruling:**

This is the debtors' motion to set aside and vacate the hearing, also on this calendar, on the trustee's motion to employ Ken Turton as his real estate broker. As set forth in the court's tentative ruling on the trustee's motion, the trustee's motion was properly served and set for hearing. Thus, the court will not "set aside" or "vacate" the hearing on that motion. The court has addressed in its ruling on the trustee's motion the arguments the debtors have made in their motion to set aside or vacate the hearing. The court incorporates herein its ruling on the trustee's motion, and for the reasons set forth therein, the debtors' motion to set aside or vacate the hearing on the trustee's motion will be denied by minute order. No appearance is necessary.

52. 13-26559-D-7 BRIAN MCGLONE  
13-2330 RK-1  
MCGLONE V. IBERIA BANK

MOTION BY RICHARD KWUN TO  
WITHDRAW AS ATTORNEY  
12-24-13 [7]

**Tentative ruling:**

This is the motion of Richard Kwun to withdraw as counsel for the plaintiff in this adversary proceeding. The motion was brought pursuant to LBR 9014-1(f)(2), with no written opposition required; thus, the court will entertain opposition at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The supporting declaration does not state the current or last known address of the client and does not describe the efforts made to notify the client of the motion to withdraw, as required by LBR 2017-1(e). (The declaration states only that Mr. Kwun has attempted to communicate with the plaintiff but has not received a response.) For these reasons, the court intends to deny the motion. In the alternative, the court will continue the hearing to allow the moving party to file a supplemental declaration.

The court has an additional concern. The complaint in this adversary proceeding names Lanphier & Associates as the plaintiff's counsel, and was signed by Mr. Kwun for Lanphier & Associates. Mr. Kwun's supporting declaration states that the plaintiff paid Lanphier & Associates \$800 to file an adversary complaint for which Mr. Kwun was "the responsible employee handling the matter." R. Kwun Decl., filed Dec. 24, 2013 ("Decl."), at 1:19-20. Mr. Kwun states that while he was in the processing of resolving the matter with the defendant, he was laid off by Lanphier & Associates. Mr. Kwun contacted the court clerk's office to determine who is attorney of record for the plaintiff; that office referred him to <https://efiling.caeb.uscourts.gov/help/ChangeOfLawFirm.pdf>, which describes the required procedure in this district for an attorney who changes law firms, taking some clients with him or her and leaving others with the former firm. In cases and proceedings that are moving with the attorney to his or her new law firm, a substitution of attorneys must be filed and the attorney must then update his or her e-filing user account and serve a notice of change of address and phone number on the other parties. For cases staying with the former firm, a document called "Change in Designation of Counsel for Service" must be filed and served.

Mr. Kwun states he "notified Lanphier & Associates that a Designation of Counsel be executed by Steele Lanphier since he received the entire \$800[,] but no response was returned." Decl. at 2:4-6. Mr. Kwun has also tried to communicate with the plaintiff, but has not received a response. That is the basis for Mr. Kwun's motion to withdraw.

In these circumstances, the effect of Mr. Kwun's withdrawal as the plaintiff's counsel, assuming the motion is granted, is unclear. The court's local rules provide that "[a]pppearances as an attorney of record shall not be made in the name of a law firm, organization, public entity, agency, or department." LBR 2017-1(c). In other words, a law firm cannot be attorney of record for a party, only an individual can. Upon Mr. Kwun's withdrawal, the plaintiff would be left without an attorney of record despite the fact that he paid a retainer to Lanphier & Associates. Under the procedures cited by the clerk's office and described above, Lanphier & Associates is required to file and serve a Change in Designation of

Counsel for Service to indicate what attorney will be acting as attorney of record in place of Mr. Kwun, yet Lanphier & Associates has not taken that step. The court notes that Mr. Kwun did not serve this motion on Lanphier & Associates or any of its attorneys. In the event the court continues the hearing on this motion, the moving party will be required to file a notice of continued hearing and serve it, together with the motion, memorandum of points and authorities, supporting declaration, and a copy of this ruling, as it will be set forth in the civil minutes, on Lanphier & Associates, and shall also serve the notice of continued hearing and a copy of this ruling on the plaintiff.

The court will hear the matter.

53.	13-28369-D-7	EDWIN GERBER	CONTINUED MOTION FOR RELIEF
	FWP-1		FROM AUTOMATIC STAY AND/OR
	MONTICELLO BANKING COMPANY		MOTION FOR ADEQUATE PROTECTION
	VS.		10-16-13 [31]

54.	11-22685-D-7	BLUE RIBBON STAIRS, INC.	MOTION FOR RELIEF FROM
	JSK-5		AUTOMATIC STAY
	CENTEX HOMES VS.		12-18-13 [1053]

**Final ruling:**

This matter is resolved without oral argument. This is Centex Homes' 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.

55. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM  
JSK-4 AUTOMATIC STAY  
KB HOME COASTAL INC. VS. 12-18-13 [1046]

**Final ruling:**

This matter is resolved without oral argument. This is Centex Homes' 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.