UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 13, 2016 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. 15-27305-D-7 ROBERT CHILES — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-8-15 [32]

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.

2. 15-28507-D-7 RICHARD COMER — MOTION FOR RELIEF FROM AUTOMATIC STAY
CJO-1
U.S. BANK TRUST, N.A. VS.
12-11-15 [19]

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 debtor's Statement of Intentions indicates he 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. 15-23511-D-7 SCOTT COURTNEY — MOTION TO DISMISS ADVERSARY
15-2150 SS-2 — PROCEEDING
BAKER V. COURTNEY — 12-9-15 [38]

Tentative ruling:

This is the defendant's motion to dismiss the plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(6), made applicable in this proceeding by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. The plaintiff has filed opposition. For the following reasons, the motion will be denied. In addition, the court will grant relief from stay to permit the parties to proceed with pending state court litigation.

In ruling on a Rule 12(b)(6) motion, a court "accept[s] as true all facts alleged in the complaint, and draw[s] all reasonable inferences in favor of the plaintiff." al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Newcal Indus., Inc. v. Ikon Office Solution, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court assesses whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd, 580 F.3d at 949, citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

The plaintiff and defendant are spouses and parties to a marital dissolution proceeding pending in the Sacramento County Superior Court. In addition, prior to the filing of the defendant's bankruptcy case, the plaintiff sued the defendant in state court for damages for breach of fiduciary duty, conversion, and financial dependent adult abuse, and for an accounting. That action is pending but was stayed by the defendant's filing of his bankruptcy case.

By her complaint [1] in this adversary proceeding, the plaintiff seeks the same relief as in the state court action, along with a determination that the judgment is nondischargeable pursuant to § 523(a)(4) of the Bankruptcy Code on account of a breach of fiduciary duty and/or § 523(a)(15) as a debt incurred in connection with a separation agreement or divorce decree. The plaintiff's allegations are based on the defendant's alleged mismanagement of funds that were the net proceeds of the plaintiff's settlement of a personal injury lawsuit (the "Funds" or the "Settlement Funds"). The defendant's motion is based on his characterization of the complaint. In the defendant's view, the complaint alleges the Settlement Funds were the plaintiff's separate property, not community property. That is, the defendant views the complaint as alleging that he had and breached a fiduciary duty to the plaintiff with respect to her separate property, not with respect to community property. The defendant contends that under California law, there is no fiduciary duty between spouses with respect to separate property, and thus, that the defendant had no fiduciary duty to the plaintiff under federal law. As a result, the defendant claims, the complaint is not sufficient to state a claim under § 523(a)(4).

The court disagrees with the defendant's characterization of the complaint. In the court's view, the complaint alleges the Settlement Funds were community property. It is unequivocal that California law creates a fiduciary duty between spouses with respect to community property,[2] and the defendant does not dispute that. Thus, the court need not reach the question whether, under California law, one spouse owes a fiduciary duty to the other with respect to separate property.

The complaint alleges that the accident that gave rise to the plaintiff's personal injury lawsuit and, in turn, the Settlement Funds, took place during the parties' marriage. It does not allege that a judgment of dissolution of marriage or

of legal separation had been entered at the time of the accident or that the parties were living separately. Thus, as a matter of California law, the Settlement Funds were community property. Cal. Fam. Code § 780.[3]

To support his theory that the complaint is referring to separate property, the defendant cites the complaint as including certain statements. As listed in the defendant's motion, they are:

(1) The defendant mismanaged funds which are the plaintiff's sole and separate property. CITATION

(2) Upon receipt of the Funds, the parties deposited the check into an account with their financial advisors, an account the parties designated as community property, and the next day, the parties transferred the Funds into an annuity in the plaintiff's name alone. [Citation.]

(3) The sums either were expressly assigned to the plaintiff in their entirety or will be in the pending divorce. [Citation.]

(4) The plaintiff was and remained entitled to possession of the Settlement Funds. [Citation.]

(5) The defendant enjoyed a position of trust in that the plaintiff relied on him and trusted him to manage and control the Funds for her benefit.

If the first of these statements were actually in the complaint, it might support the defendant's position. But it's not. Whereas the rest of the sentences are followed in the defendant's list by page and line citations to the complaint, this one is followed by the word "CITATION." It appears this was the defendant's counsel's reminder to himself to locate the place in the complaint where this sentence appears. However, nowhere does the complaint refer to the Settlement Funds as either the plaintiff's sole and separate property, her sole property, or her separate property.

In fact, the complaint specifically alleges the Settlement Funds were "'community estate personal injury damages,' as defined by California Family Code § 2603."[4] Subsection (a) of that section defines that term for purposes of subsection (b), which provides that on dissolution of the marriage, community estate personal injury damages shall be assigned to the party who suffered the injuries unless the court determines that the interests of justice require another disposition. By alleging that the Settlement Funds were "community estate personal injury damages as defined in § 2603," the plaintiff specifically alleges that the Funds were community property. The complaint confuses matters somewhat when it alleges the Funds were assigned to the plaintiff by agreement of the parties; however, it also alleges in the alternative that they will be assigned to the plaintiff in the pending divorce case. Thus, the reference to the Funds having been assigned to the plaintiff does not, as the defendant would have it, constitute an allegation that the Funds were the sole and separate property of the plaintiff.

Nor do the references (1) to the annuity being "in the plaintiff's name alone," (2) to the plaintiff being "entitled to possession" of the Funds, or (3) to the plaintiff trusting the defendant to manage the Funds "for her benefit" constitute allegations that the Funds were separate property. In the court's view, those statements, either alone or together, are not sufficient for the court to find through a motion to dismiss that the community property Settlement Funds were

transmuted into separate property of the plaintiff.

A transmutation of community property to separate property (or vice versa) must be made in writing "by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." Cal. Fam. Code § 852(a). In In re Marriage of Valli, 58 Cal. 4th 1396, 1406 (2014), the California Supreme Court held that a husband's act of purchasing an insurance policy with community property funds and putting it in his wife's name as the sole owner and beneficiary did not satisfy the express written declaration requirement of § 852(a), and thus, did not operate to transmute the policy into the wife's separate property.

Similarly, in Estate of MacDonald, 51 Cal. 3d 262 (1990), cited with approval in Marriage of Valli, the court considered an "Adoption Agreement and Designation of Beneficiary" form by which a husband set up IRA accounts to hold the proceeds of a community property pension plan. The adoption agreement designated the beneficiary of the IRAs as a revocable living trust of which the beneficiaries were the husband's children from an earlier marriage. Because the husband's current wife was not the beneficiary of the IRAs, the adoption agreement required her consent in these words: "If participant's spouse is not designated as the sole primary beneficiary, spouse must sign consent. Consent of Spouse: Being the participant's spouse, I hereby consent to the above designation." The court held that the wife's signature on this consent did not operate to transmute the funds into the husband's separate property. 51 Cal.3d at 272-73.

> Obviously, the consent paragraphs contain no language which characterizes the property assertedly being transmuted, viz., the pension funds which had been deposited in the account. It is not possible to tell from the face of the consent paragraphs, or even from the face of the adoption agreements as a whole, whether [the wife] was aware that the legal effect of her signature might be to alter the character or ownership of her interest in the pension funds. There is certainly no language in the consent paragraphs, or the adoption agreements as a whole, expressly stating that [the wife] was effecting a change in the character or ownership of her interest.

Id.

In the present case, the plaintiff's complaint does not allege that there existed any sort of writing constituting an express declaration of transmutation. Under Marriage of Valli and Estate of MacDonald, the fact that the Settlement Funds were put into an annuity in the plaintiff's name alone is insufficient. The reference to the plaintiff being "entitled to possession" of the Funds is followed immediately by the allegation that the defendant wrongfully diverted the Funds to his sole dominion, possession, and control: the plaintiff's "entitlement to possession" is logically interpreted as her entitlement to possession as the holder of an undivided one-half interest in community property. The allegation that the defendant had a duty to manage and control the Funds "for the plaintiff's benefit" does not constitute an allegation that the Settlement Funds were the separate property of the plaintiff. Instead, the allegation logically refers to the obligation of each spouse under Cal. Fam. Code §§ 721 and 1100(e) to act with respect to the other spouse in the management and control of community assets in accordance with general rules governing fiduciary relationships.

The court finds that the complaint alleges the Settlement Funds were community

property. The defendant does not dispute that under California law, spouses have a fiduciary duty to one another with respect to community property assets. The only remaining question is whether, as a matter of federal law, that duty is sufficient to give rise to a cause of action for breach of fiduciary duty under § 523(a)(4) of the Bankruptcy Code.[5] The court is to consult California law.[6] The issue was thoroughly analyzed by the Ninth Circuit Bankruptcy Appellate Panel in Lovell v. Stanifer (In re Stanifer), 236 B.R. 709 (9th Cir. BAP 1999), with the Panel concluding that "California law imposes a fiduciary duty on spouses and former spouses with regard to community property within the narrow meaning of § 523(a)(4)." 236 B.R. at 719; see also Lam v. Lam (In re Lam), 364 B.R. 379, 383 (Bankr. N.D. Cal. 2007). This court agrees with and adopts the Panel's reasoning and conclusion in Stanifer.

Finally, the defendant contends the complaint fails to state a claim for relief under § 523(a)(15). The argument is confusing. First, the defendant contends his obligations to the plaintiff "are not alleged to be in the nature of a domestic support obligation"; thus, "this code section does not apply to those obligations." Subsection (a)(15), however, does apply to obligations other than support obligations: it specifically covers obligations "not of the kind described in paragraph (5)"; that is, obligations that are not support obligations. It covers, generally speaking, obligations arising out of a property settlement agreement or court order regarding property distribution. Thus, it covers the obligations alleged in the plaintiff's complaint. Second, the defendant reiterates his claim that "[t]he property as alleged is identified as Plaintiff's sole and separate property." As discussed above, the complaint refers to community property; thus, the obligations are covered by § 523(a)(15).

For the reasons stated, the court concludes that the plaintiff's complaint is sufficient to state a claim upon which relief can be granted, and the defendant's motion will be denied. In addition, the court finds that all of the plaintiff's causes of action, except to the extent they seek a determination of nondischargeability, would be more appropriately determined by the state court. There is already a pending state court action in which the plaintiff sets forth the same causes of action as she has here. The factual allegations of the complaint in this adversary proceeding raise issues of state law not bankruptcy law. Thus, the court will grant the parties relief from stay to proceed to judgment in the state court and will stay this adversary proceeding, with the parties to return to this court for a determination of the dischargeability issues, over which this court has exclusive jurisdiction, in the event the plaintiff obtains a monetary award in the state court or some other award that would fall within the scope of a chapter 7 discharge. Enforcement of any state court judgment, except a judgment for injunctive relief (which the plaintiff also seeks, both here and in the state court), will be left to this court.

The court will hear the matter.

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1 All references to the "complaint" in this ruling are to the plaintiff's first amended complaint, filed November 6, 2015.

2 See Cal. Fam. Code §§ 721(b), 1100(e). (Unless otherwise indicated, all subsequent statutory references are to the California Family Code.)

3 Except as provided in Section 781 and subject to the rules of allocation

set forth in Section 2603, money and other property received or to be received by a married person in satisfaction of a judgment for damages for personal injuries, or pursuant to an agreement for the settlement or compromise of a claim for such damages, is community property if the cause of action for the damages arose during the marriage.

Cal. Fam. Code § 780.

Money or other property received or to be received by a married person in satisfaction of a judgment for damages for personal injuries, or pursuant to an agreement for the settlement or compromise of a claim for those damages, is the separate property of the injured person if the cause of action for the damages arose as follows:

(1) After the entry of a judgment of dissolution of a marriage or legal separation of the parties.

(2) While either spouse, if he or she is the injured person, is living separate from the other spouse.

Cal. Fam. Code § 781(a).

4 **The complaint also refers to the defendant as having a fiduciary duty to the plaintiff "as her husband" and "in managing the couples' finances," to the "state of the couple's financial affairs," to the Funds as being in "the common account," and to the defendant as having made "an investment or loan of community property . . . for his own benefit, to the detriment of Plaintiff." All of these allegations support the conclusion that the plaintiff is talking about community property.**

5 **"The meaning of 'fiduciary' in § 523(a)(4) is an issue of federal law." Ragsdale v. Haller, 780 F.2d 794, 796 (9th Cir. 1986).**

6 **"Although the concept of fiduciary is to be narrowly defined as a matter of federal law, state law is to be consulted to determine when a trust in this strict sense exists." Id.**

4. 14-29412-D-7 ADAM DYE — MOTION TO COMPEL ABANDONMENT
RWH-2 — 11-6-15 [48]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon certain claims in a pending state court lawsuit. The court's docket reflects that the chapter 7 trustee has no opposition to the motion. However, the court has a concern about the notice of hearing, and as a result, will conduct a hearing to determine whether any creditor or other party-in-interest has an objection.

The notice of hearing states that written opposition to the motion must be filed at least 14 days prior to the hearing date, and that failure to file timely written opposition may result in the motion being resolved without oral argument. However, it also states, "If you do not want the court to approve the relief requested, then you or your attorney must appear at the hearing and advise the Court and the moving party that the motion is opposed and indicate the basis of the opposition." The latter language suggests that opposition may be presented orally at the hearing. Thus, the court will hear the matter.

5.	14-25816-D-11 DNL-41	DEEPAL WANNAKUWATTE	CONTINUED MOTION TO ABANDON 5-21-15 [560]
6.	14-25816-D-11 DNL-42	DEEPAL WANNAKUWATTE	CONTINUED MOTION TO ABANDON 5-21-15 [565]
7.	14-25816-D-11 DNL-44	DEEPAL WANNAKUWATTE	CONTINUED MOTION TO ABANDON 5-21-15 [575]
8.	14-25816-D-11 DNL-45	DEEPAL WANNAKUWATTE	CONTINUED MOTION TO ABANDON 5-21-15 [580]

9. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-46 5-21-15 [585]

10. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-47 5-21-15 [590]

11. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-48 5-21-15 [595]

12. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-49 5-21-15 [600]

13. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-50 5-21-15 [605]

14. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-52 5-21-15 [615]

15. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-53 5-21-15 [620]

16. 14-25816-D-11 DEEPAL WANNAKUWATTE CONTINUED MOTION TO ABANDON
DNL-54 5-21-15 [625]

17. 14-25816-D-11 DEEPAL WANNAKUWATTE
DNL-55

CONTINUED MOTION TO ABANDON
5-21-15 [630]

18. 13-30317-D-7 JAMES COREY
JRR-7

MOTION FOR COMPENSATION FOR JOHN R. ROBERTS, CHAPTER 7 TRUSTEE
11-18-15 [220]

19. 14-27519-D-12 LOEK VAN WARMERDAM
14-2298
TAYLOR ET AL V. VAN WARMERDAM

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-7-15 [41]

DEBTOR DISMISSED: 11/18/2015

Final ruling:

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

20. 09-46625-D-7 VASCO/MICHELE DEMELLO
DNL-2

MOTION FOR TURNOVER OF PROPERTY
12-16-15 [104]

21. 15-28325-D-7 CYNTHIA LYMAN — MOTION TO COMPEL ABANDONMENT
MG-1 — 12-15-15 [14]

22. 15-25626-D-11 GERT/LAURALEE JENSEN — MOTION TO DISMISS CASE
WSS-2 — 12-8-15 [84]

Tentative ruling:

This is debtors' motion to dismiss this chapter 11 case. The court intends to deny the motion because the debtors failed to serve any of the four creditors who have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g), and failed to serve two of them at all, and thus, did not comply with Fed. R. Bankr. P. 2002(a)(4). In addition, the moving parties failed to serve Erik Jensen, listed on their amended Schedule H.

As a result of these service defects, the motion will be denied. In the alternative, the court will continue the hearing to permit the moving parties to effect proper service. The court will hear the matter.

23. 15-29031-D-7 OKSANA KOPCHUK — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1 — 12-7-15 [16]
MULTIGROUP, LLC VS.

Final ruling:

This is Multigroup, LLC's (the "Movant") motion for relief from stay. The Movant asserts, and it is not disputed, that it foreclosed on the real property that is the subject of this motion pre-petition. Movant further asserts that as a result of this pre-petition foreclosure sale the debtor has only a possessory interest in the property. Accordingly, cause exists for relief from stay under Bankruptcy Code § 362(d)(1). No party has filed opposition and the case trustee has filed a statement of non-opposition.

As Movant has established it foreclosed on the property pre-petition and the debtor has only a possessory interest in the property, relief from stay will be granted under Code § 362(d)(1) and the court will waive FRBP 4001(a)(3) by minute order. No appearance is necessary.

24. 15-21934-D-7 JAMES/MONICA HODGES — MOTION FOR COMPENSATION FOR NORTHSTATE AUCTIONS, INC., AUCTIONEER(S)
DMW-7 — 12-3-15 [61]

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 compensation for Northstate Auctions, Inc., Auctioneer, totaling $2,898.82 is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

25. 15-28935-D-7 D'GEORGE/ANJANETTE HINES
APN-1
SANTANDER CONSUMER USA, INC.
VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
12-10-15 [16]

Final ruling:

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

26. 14-31544-D-7 SANDRA PELTOLA
BLL-3
MOTION FOR COMPENSATION FOR BYRON LEE LYNCH, TRUSTEE'S ATTORNEY
12-9-15 [37]

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.

27. 14-25148-D-11 HENRY TOSTA
MF-34
MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL VALLEY REGION
12-16-15 [556]

28. 15-24848-D-7 SAOVANNI MEAS
15-2168 BJK-1
MEAS V. GREEN TREE SERVICING, LLC ET AL
MOTION TO DISMISS ADVERSARY PROCEEDING
12-7-15 [21]

Tentative ruling:

This is the motion of defendants Green Tree Servicing, LLC ("Green Tree"), and Federal National Mortgage Association ("FNMA") to dismiss the plaintiff's amended complaint for lack of jurisdiction and failure to state a claim upon which relief can be granted. The plaintiff has not filed opposition. For the following reasons, the motion will be granted.

By way of the original complaint in this adversary proceeding, the plaintiff, who was the debtor in the chapter 7 case in which this adversary proceeding was commenced (the "debtor"), seeks an accounting, damages, imposition of a constructive trust, and an injunction against the defendants from evicting the debtor from the debtor's home. These remedies are sought based on alleged violations of the Truth in Lending Act, 15 U.S.C. §§ 1601-1667f ("TILA"), and the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (the "FDCPA"), and an alleged wrongful foreclosure. By a much shorter document entitled "First Amended Adversary Proceeding/Request for a Permanent Injunction," the debtor requests a permanent injunction "barring any and all conduct consistent with the assumption or presumption of ownership by the Defendant including the unlawful detainer procedures filed on May 7, 2015, against the Plaintiff and tenants residing at the property located at [address]." The court cannot be sure whether the First Amended Adversary Proceeding was intended as an amended complaint or an amendment – or addition – to the original complaint. This ruling is applicable to both; thus, the court will grant this motion and dismiss both.

The debtor filed the original complaint on August 21, 2015 and the First Amended Adversary Proceeding on November 5, 2015. As the defendants point out, the chapter 7 case in which this adversary proceeding was filed was dismissed by order dated November 18, 2015 because of the debtor's failure to appear at the meeting of creditors.[1] The defendants posit that as a result of the dismissal of the chapter 7 case, this court lacks jurisdiction over the adversary proceeding. In light of In re Carraher, 971 F.2d 327, 328 (9th Cir.1992), that is not the case. Instead, this court has discretion to retain jurisdiction over the adversary proceeding. Id. The factors the court is to consider are judicial economy, convenience, fairness, and comity. Id.

First, however, the court notes that the jurisdictional thread between this court and the debtor's claims is very thin. The claims do not arise under the Bankruptcy Code, do not arise in a case under the Bankruptcy Code, and are tenuously, if at all, related to a case under the Bankruptcy Code. See 28 U.S.C. §§ 1334(b), 157(a); Harris v. Wittman (In re Harris), 590 F.3d 730, 737 (9th Cir. 2009); Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435 (9th Cir. 1995); In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984); Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 490 (9th Cir. BAP 2008). Thus, if the adversary proceeding had been commenced after the underlying case was dismissed, the court would have determined it had no jurisdiction to consider the debtor's claims. See Sea Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries Dev. Assn.), 439 F.3d 545, 548-49 (9th Cir. 2006).

Turning to the factors the court is to consider, first, on the subject of judicial economy, this court has virtually no time invested in the adversary proceeding. The only events that happened in the adversary proceeding before the underlying case was dismissed were the debtor's filing of the original and amended complaints, the issuance of summonses, the debtor's filing of an affidavit in support of the request for a permanent injunction (that is, in support of the First Amended Adversary Proceeding/Request for a Permanent Injunction), the debtor's verification of that request, and the debtor's earlier filing of a notice of motion and motion by which the debtor sought a statement by the chapter 7 trustee of interest in or abandonment of the real property referred to in the adversary proceeding.[2] The debtor did not set that motion for hearing, and thus, the court never considered it. Because this court has done virtually nothing in the adversary

proceeding up until now, this factor weighs in favor of this court declining to retain jurisdiction of the adversary proceeding.

Second, in terms of convenience, the defendants point out that the debtor filed a state court action against them on July 23, 2015, five weeks after the debtor filed the chapter 13 petition commencing the underlying case and ten days after the debtor voluntarily converted the case to chapter 7. Defendant FNMA filed a demurrer, which was sustained with leave to amend, but instead of amending the state court complaint, the debtor dismissed it without prejudice and filed the amended complaint in this adversary proceeding. Before the filing of the present motion, the defendants had, so far as the record reveals, taken no action in the adversary proceeding. This court has no reason to conclude the debtor may not return to state court to pursue the claims,[3] and concludes that no significant inconvenience will accrue to any party by this court declining to retain jurisdiction over the claims.

In terms of fairness, this adversary proceeding is in the very earliest stage, as was the state court action when the debtor dismissed it. Neither party has invested significant time or effect in the adversary proceeding, and the court has no reason to believe undue delay would result from this court declining to retain jurisdiction over the debtor's claims. Thus, this factor weighs in favor of that result.

Finally, the issue of comity weighs strongly in favor of this court declining to retain jurisdiction. The debtor's claims are based almost exclusively on state law and federal non-bankruptcy law. In the original complaint, the debtor invokes provisions of the Uniform Commercial Code, which is a matter of state law, as well as New York and District of Columbia law, and relies heavily on TILA and the FDCPA. The debtor does refer in the original complaint to certain bankruptcy laws and rules; however, those references are in connection with an alleged chapter 11 case of GMAC Mortgage, LLC, and the Central District of California bankruptcy case of a third party named Cristina Montoya, alleged to have been an equitable owner of an undivided 3% interest in the real property that is the subject of the debtor's complaints. This court has no more connection to those bankruptcy cases than a state court or federal district court would have. Because issues of state law and federal non-bankruptcy law predominate in this adversary proceeding, this factor weighs in favor of the issues being resolved by a court other than this court.

For the reasons stated above, the court will exercise its discretion and decline to retain jurisdiction of the adversary proceeding. Accordingly, the defendants' motion will be granted and the debtor's original and amended complaints will be dismissed. This ruling moots the issue of whether the complaint states a cause of action upon which relief can be granted and the court will not consider it. The court will hear the matter.

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1 The court notes that the debtor filed an amended Schedule B about five weeks into the underlying bankruptcy case, on which the debtor disclosed the claims that are the subject of this adversary proceeding. Thus, this is not a case of undisclosed property which remains property of the bankruptcy estate after the bankruptcy case is closed, and as far as the court can tell, there is no dispute about the debtor's standing to pursue the claims.

2 As with the claims against the defendants, the debtor scheduled the real property in the underlying case.

3 The court does not mean to suggest the debtor must pursue these claims in state court. It is possible the debtor could pursue them in federal court – this court expresses no opinion on the issue.

29.	15-24848-D-7 15-2168 MEAS V. GREEN TREE SERVICING, LLC ET AL	SAOVANNI MEAS RJR-1	MOTION TO DISMISS ADVERSARY PROCEEDING 12-7-15 [25]

Tentative ruling:

This is the motion of defendant MTC Financial Inc. to dismiss this adversary proceeding for failure to state a claim upon which relief can be granted. The plaintiff has not filed opposition. For the following reasons, the motion will be granted, although on a different ground from the one advanced by the defendant.

By way of the original complaint in this adversary proceeding, the plaintiff, who was the debtor in the chapter 7 case in which this adversary proceeding was commenced (the "debtor"), seeks an accounting, damages, imposition of a constructive trust, and an injunction against the moving party's co-defendants from evicting the debtor from the debtor's home.[1] These remedies are sought based on alleged violations of the Truth in Lending Act, 15 U.S.C. §§ 1601-1667f ("TILA"), and the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (the "FDCPA"), and an alleged wrongful foreclosure. By a much shorter document entitled "First Amended Adversary Proceeding/Request for a Permanent Injunction," the debtor requests a permanent injunction "barring any and all conduct consistent with the assumption or presumption of ownership by the Defendant including the unlawful detainer procedures filed on May 7, 2015, against the Plaintiff and tenants residing at the property located at [address]." The court cannot be sure whether the First Amended Adversary Proceeding was intended as an amended complaint or an amendment – or addition – to the original complaint. This ruling is applicable to both; thus, the court will grant this motion and dismiss both.

The debtor filed the original complaint on August 21, 2015 and the First Amended Adversary Proceeding on November 5, 2015. The chapter 7 case in which this adversary proceeding was filed was dismissed by order dated November 18, 2015 because of the debtor's failure to appear at the meeting of creditors.[2] The moving party's co-defendants posit in their own motion that as a result of the dismissal of the chapter 7 case, this court lacks jurisdiction over the adversary proceeding. In light of In re Carraher, 971 F.2d 327, 328 (9th Cir.1992), that is not the case. Instead, this court has discretion to retain jurisdiction over the adversary proceeding. Id. The factors the court is to consider are judicial economy, convenience, fairness, and comity. Id.

First, however, the court notes that the jurisdictional thread between this court and the debtor's claims is very thin. The claims do not arise under the Bankruptcy Code, do not arise in a case under the Bankruptcy Code, and are tenuously, if at all, related to a case under the Bankruptcy Code. See 28 U.S.C. §§ 1334(b), 157(a); Harris v. Wittman (In re Harris), 590 F.3d 730, 737 (9th Cir. 2009); Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435 (9th Cir. 1995); In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984); Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 490 (9th Cir. BAP 2008). Thus, if the adversary proceeding

had been commenced after the underlying case was dismissed, the court would have determined it had no jurisdiction to consider the debtor's claims. See Sea Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries Dev. Assn.), 439 F.3d 545, 548-49 (9th Cir. 2006).

Turning to the factors the court is to consider, first, on the subject of judicial economy, this court has virtually no time invested in the adversary proceeding. The only events that happened in the adversary proceeding before the underlying case was dismissed were the debtor's filing of the original and amended complaints, the issuance of summonses, the debtor's filing of an affidavit in support of the request for a permanent injunction (that is, in support of the First Amended Adversary Proceeding/Request for a Permanent Injunction), the debtor's verification of that request, and the debtor's earlier filing of a notice of motion and motion by which the debtor sought a statement by the chapter 7 trustee of interest in or abandonment of the real property referred to in the adversary proceeding.[3] The debtor did not set that motion for hearing, and thus, the court never considered it. Because this court has done virtually nothing in the adversary proceeding up until now, this factor weighs in favor of this court declining to retain jurisdiction of the adversary proceeding.

Second, in terms of convenience, the moving party's co-defendants point out that the debtor filed a state court action against them on July 23, 2015, five weeks after the debtor filed the chapter 13 petition commencing the underlying case and ten days after the debtor voluntarily converted the case to chapter 7. Defendant FNMA filed a demurrer, which was sustained with leave to amend, but instead of amending the state court complaint, the debtor dismissed it without prejudice and filed the amended complaint in this adversary proceeding. Before the filing of the present motion, the moving party and its co-defendants had, so far as the record reveals, taken no action in the adversary proceeding. This court has no reason to conclude the debtor may not return to state court to pursue the claims,[4] and concludes that no significant inconvenience will accrue to any party by this court declining to retain jurisdiction over the claims.

In terms of fairness, this adversary proceeding is in the very earliest stage, as was the state court action when the debtor dismissed it. Neither party has invested significant time or effect in the adversary proceeding, and the court has no reason to believe undue delay would result from this court declining to retain jurisdiction over the debtor's claims. Thus, this factor weighs in favor of that result.

Finally, the issue of comity weighs strongly in favor of this court declining to retain jurisdiction. The debtor's claims are based almost exclusively on state law and federal non-bankruptcy law. In the original complaint, the debtor invokes provisions of the Uniform Commercial Code, which is a matter of state law, as well as New York and District of Columbia law, and relies heavily on TILA and the FDCPA. The debtor does refer in the original complaint to certain bankruptcy laws and rules; however, those references are in connection with an alleged chapter 11 case of GMAC Mortgage, LLC, and the Central District of California bankruptcy case of a third party named Cristina Montoya, alleged to have been an equitable owner of an undivided 3% interest in the real property that is the subject of the debtor's complaints. This court has no more connection to those bankruptcy cases than a state court or federal district court would have. Because issues of state law and federal non-bankruptcy law predominate in this adversary proceeding, this factor weighs in favor of the issues being resolved by a court other than this court.

For the reasons stated above, the court will exercise its discretion and decline to retain jurisdiction of the adversary proceeding. Accordingly, the defendant's motion will be granted and the debtor's original and amended complaints will be dismissed. This ruling moots the issue of whether the complaint states a cause of action upon which relief can be granted and the court will not consider it. The court will hear the matter.

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1 The debtor did not name the moving party as a defendant in the original complaint, but only in a "First Amended Adversary Proceeding/Request for a Permanent Injunction."

2 The court notes that the debtor filed an amended Schedule B about five weeks into the underlying bankruptcy case, on which the debtor disclosed the claims that are the subject of this adversary proceeding. Thus, this is not a case of undisclosed property which remains property of the bankruptcy estate after the bankruptcy case is closed, and as far as the court can tell, there is no dispute about the debtor's standing to pursue the claims.

3 As with the claims against the defendants, the debtor scheduled the real property in the underlying case.

4 The court does not mean to suggest the debtor must pursue these claims in state court. It is possible the debtor could pursue them in federal court – this court expresses no opinion on the issue

30. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO REOPEN ADVERSARY PROCEEDING AND VACATE DISMISSAL
12-2417
BURKART V. PRASAD — 11-13-15 [128]

ADV. CLOSED: 05/27/2015

Final ruling:

The hearing on this motion is continued to January 27, 2016 at 10:00 a.m. No appearance is necessary.

31. 14-32452-D-7 JOHN RODRIGO — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
U.S. BANK TRUST, N.A. VS. — 12-18-15 [147]

32. 14-32452-D-7 JOHN RODRIGO — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-1 — 12-11-15 [139]
BANK OF AMERICA, N.A. VS.

Final ruling:

This matter is resolved without oral argument. This is Bank of America, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

33. 14-32452-D-7 JOHN RODRIGO — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 11-30-15 [127]
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.

34. 15-29453-D-11 SILVERHAWK INC. — STATUS CONFERENCE RE: VOLUNTARY PETITION
12-4-15 [1]

35. 15-28060-D-11 ACADEMY OF PERSONALIZED LEARNING, INC. — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
10-15-15 [1]

This matter will not be called before 10:45 a.m.

36.	15-28060-D-11 MLA-4	ACADEMY OF PERSONALIZED LEARNING, INC.	CONTINUED MOTION TO EMPLOY MITCHELL L. ABDALLAH AS ATTORNEY 10-28-15 [62]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the debtor's motion to employ Abdallah Law Group, P.C. ("ALG") as bankruptcy counsel in this case. The hearing was continued for Mitchell Abdallah to supplement the record, which he has done. The United States Trustee ("UST") has filed opposition on the ground that the supplemental evidence reveals that ALG received its retainer, $50,000, post-petition and offset $12,606.50 for pre-petition services, leaving $37,393.50 for post-petition representation. Thus, on the petition date, ALG was a creditor of the debtor, being owed $12,606.50, and "as a matter of black-letter law," was not a disinterested person. § 101(14)(A); see In re Kobra Props., 406 B.R. 396, 403 (Bankr. E.D. Cal. 2009). The UST also contends Mr. Abdallah's disclosure of this connection was not full, candid, and complete. In reply, Mr. Abdallah testifies he requested the debtor to pay the retainer by way of a cashier's check, and based on his hasty review of the check when it was received, he thought it was a cashier's check, and therefore, described it as such in his first supplemental declaration in support of this motion.

Mr. Abdallah also acknowledges in his reply that his retainer was an unauthorized post-petition transfer and that ALG was a creditor on the petition date. He states ALG has waived its claim for fees for its pre-petition services and has returned to the debtor the entire amount of the retainer it received less $1,717, which it applied in reimbursement of the debtor's filing fee, with the United States Trustee's consent. Thus, the reply introduces a new element into the analysis – ALG's waiver of its pre-petition claim – and the court will hear from the United States Trustee on this point. If the reply satisfies the United States Trustee's concerns, the court will authorize the employment of ALG conditioned on ALG's waiver of its pre-petition fee and all pre-petition costs except the filing fee, for which ALG has been reimbursed. In addition, if the reply satisfies the United States Trustee's concerns about Mr. Abdallah's candor, the court will also accept his explanation, although the court cautions Mr. Abdallah that the lack of attention to detail he exhibited in connection with the retainer will not be well-received if it continues to occur in this case.

Because the debtor will be employing two different law firms as its counsel, the court will require both to be meticulous in billing for their time, paying particular attention to any duplication of effort so as not to charge for it. In a supplemental declaration filed December 16, 2015, Richard Lapping, who will be ALG's co-counsel, states it is his understanding that Mr. Abdallah and he will operate similar to a law firm with a senior and junior attorney handling a case, "with the expectation that duplication will be avoided, but coordination will be required." Again, both counsel are cautioned that they must keep detailed time records sufficient for the court to assess whether there has been any duplication of services and to determine whether the joint representation has resulted in a greater expense to the estate than would have been incurred if the debtor had employed a single law firm.

The court will hear the matter.

37. 15-28060-D-11 MLA-6 — ACADEMY OF PERSONALIZED LEARNING, INC. — MOTION TO AUTHORIZE ADDITIONAL INDEPENDENT CONTRACTORS TO BE PAID WAGES ACCRUED PRE-PETITION 12-16-15 [162]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the debtor's motion for authorization to make payments to certain independent contractors for pre-petition services. The motion was brought pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court has a concern about service of the motion. The moving party failed to serve three of the parties listed on its Schedule G – Columbia Elementary School District, Webb B. Morrow Jr. Living Trust, and OPS, and failed to serve several of the creditors added to the debtor's Schedule E by amendment filed December 29, 2015, including Build It, Doreen Olson, G-Force Gymnastics, Nancy Brown, Shasta Athletic Club, and Stephen Joseph. All of these are among the independent contractors whose pre-petition contracts are the subject of this motion.

The court intends to continue the hearing to permit the moving party to file a notice of continued hearing and serve it, together with the motion, on the parties not previously served. The court will hear the matter.

38. 15-28060-D-11 RAL-1 — ACADEMY OF PERSONALIZED LEARNING, INC. — MOTION TO EMPLOY RICHARD A. LAPPING AS ATTORNEY 11-9-15 [100]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This was originally filed as the debtor's application to employ the Law Office of Richard A. Lapping as bankruptcy counsel in this case. No opposition has been filed. On January 6, 2016, the debtor filed an amended application to change the name of the firm to be employed to Trodella & Lapping LLP. With the caveat that Mr. Lapping should be cognizant of the court's remarks regarding avoiding charging the estate for duplication of effort, in its ruling on the debtor's motion to employ Abdallah Law Group on this calendar, the court is prepared to grant the motion. The court will hear the matter.

39. 15-28060-D-11 RAL-2 — ACADEMY OF PERSONALIZED LEARNING, INC. — MOTION FOR AUTHORIZATION TO ASSUME UNEXPIRED LEASE OF REAL PROPERTY 12-16-15 [149]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the debtor's motion to assume an unexpired lease of real property. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court has a concern about service of the motion. The rule governing the motion is Fed. R. Bankr. P. 6006, which provides that a motion to assume an

unexpired lease is governed by Rule 9014. Rule 6006(a). Rule 9014, in turn, requires service in the manner provided for service of a summons and complaint by Rule 7004.

The lessor under the lease the debtor seeks to assume is the Webb B. Morrow Jr. Living Trust. At least one court has suggested that the applicable subsection of Rule 7004 governing service on trusts is Rule 7004(b)(8). See Gugino v. Nelmap, LLC (In re Wallace), 2013 Bankr. LEXIS 1609, *20 (Bankr. D. Idaho 2013). That subsection authorizes service on any defendant by mail to "an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision." Rule 7004(b)(8).

Here, the moving party served the lessor at a post office box address with no attention line. That is, service was not directed to the attention of a trustee of the trust and was not mailed to a dwelling house, place of abode, or place where one carries on a business or profession.

In addition, the moving party failed to serve two other parties listed on its Schedule G - Columbia Elementary School District and OPS, and failed to serve several of the creditors added to the debtor's Schedule E by amendment filed December 29, 2015, including Build It, Doreen Olson, G-Force Gymnastics, Nancy Brown, Shasta Athletic Club, and Stephen Joseph.

The court intends to continue the hearing to permit the moving party to file a notice of continued hearing and properly serve it, together with the motion and supporting declaration, on the lessor, and to serve the notice of continued hearing, motion, and declaration on the parties not previously served. The court will hear the matter.

40.	15-28060-D-11 RAL-3	ACADEMY OF PERSONALIZED LEARNING, INC.	MOTION FOR AUTHORIZATION TO ASSUME EXECUTORY CONTRACT 12-16-15 [158]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the debtor's motion to assume an executory contract. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court has a concern about service of the motion. The rule governing the motion is Fed. R. Bankr. P. 6006, which provides that a motion to assume an executory contract is governed by Rule 9014. Rule 6006(a). Rule 9014, in turn, requires service in the manner provided for service of a summons and complaint by Rule 7004.

The other party to the executory contract the debtor seeks to assume is Gateway Unified School District ("Gateway"). The court takes judicial notice that Gateway is a public school district.[1] Pursuant to Fed. R. Bankr. P. 7004(b)(6), service upon a state or municipal corporation or other governmental organization shall be made "by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made . . . or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Under California law,

service on a public entity, including a district, shall be made by serving "the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Code Civ. Proc. 416.50(a), (b).

Here, the moving party served Gateway at a street address with no attention line. That is, service was not directed to the attention of the clerk, secretary, president, presiding officer, or other head of Gateway's governing body.

In addition, the moving party failed to serve three of the parties listed on its Schedule G - Columbia Elementary School District, OPS, and the Webb B. Morrow Living Trust, and failed to serve several of the creditors added to the debtor's Schedule E by amendment filed December 29, 2015, including Build It, Doreen Olson, G-Force Gymnastics, Nancy Brown, Shasta Athletic Club, and Stephen Joseph.

The court intends to continue the hearing to permit the moving party to file a notice of continued hearing and properly serve it, together with the motion and supporting declaration, on Gateway, and to serve the notice of continued hearing, motion, and declaration on the parties not previously served. The court will hear the matter.

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1 See website of the Shasta County Office of Education, http://www.shastacoe.org/page.cfm?p=2852, last visited Jan. 3, 2016.

41.	15-28060-D-11 RAL-4	ACADEMY OF PERSONALIZED LEARNING, INC.	MOTION TO EMPLOY FEDDERSEN AND COMPANY AS ACCOUNTANT(S) 12-16-15 [153]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the debtor's motion to employ the accountancy firm of Feddersen and Company, LLC ("Feddersen") as its CPA. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court has a concern about the evidence supporting the motion. Kurt Feddersen, a partner in the firm, testifies that (1) he reviewed the list of creditors in this case, had a conflicts check, and determined that no conflicts exist between the debtor and Feddersen; and (2) he is unaware of any conflict, association, relationship or connection between the firm and the debtor, any "other" creditors, any other parties-in-interest, or their respective attorneys and accountants. He adds that, to the best of his knowledge, the firm does not have any connection with the U.S. Trustee of any employee of the Office of the U.S. Trustee.

This testimony is insufficient. First, it is not up to the person applying to be employed to determine whether conflicts exist - that is a determination to be made by the court after consideration of all connections between the person (in this case, the firm) and the debtor, creditors, other parties-in-interest, their respective attorneys and accountants, the United States Trustee, and persons employed in the United States Trustee's office. As far as connections are concerned, Mr. Feddersen testifies only that he is unaware of any such connections. That one partner in the firm is unaware of any connections is insufficient. The firm proposed to be employed is required to disclose all connections, not just those

the declarant happens to be aware of. See Fed. R. Bankr. P. 2014(a). Other than running a "conflicts check" against the list of creditors in the case and making his own determination that no "conflicts" exist, there is no indication the firm conducted an investigation to determine whether the firm or any of its partners, associates, or employees have any connections with the debtors, creditors, or other parties listed in the rule.[1]

Second, the testimony that there are no such connections in inaccurate. The firm's engagement letter to the debtor, filed as an exhibit, is dated February 22, 2013 and was signed by Patricia Dougherty, as executive director of the debtor, on March 8, 2013, two and one-half years before this case was filed. The letter states the firm was retained to audit the debtor's statements of financial position as of June 30, 2013, June 30, 2014, and June 30, 2015, for which the firm would be paid a fee not to exceed $10,985. The letter also indicates the firm might also be asked to prepare the debtor's Returns of Organization Exempt from Income Tax for those audit years for an additional fee. This is precisely the sort of connection that must be disclosed in a declaration supporting an employment application; although the connection may not be disqualifying, it must be disclosed and it is not something the court and creditors should have to ferret out from the exhibits.

Here, the declarant failed to disclose the pre-petition representation at all or the dates and amounts of fees paid, the identities of the payors, and so on. Further, except for a cursory "To the best of my knowledge, FEDDERSEN: a) Is not a creditor . . .," the declarant has failed to disclose whether any portion of the fee remains unpaid, or alternatively, unearned. The motion states that the debtor has agreed to pay Feddersen fees and expenses not to exceed $10,985. The court cannot determine whether this refers to the $10,985 that was presumably paid in 2013. If it does, and if as the letter indicates, that fee was for services for the audit years ending June 30, 2013, June 30, 2014, and June 30, 2015; that is, for pre-petition years, then in what manner and how much has the debtor agreed to pay Feddersen for services for post-petition audit years?

The motion complicates this question when it states that "[a]ll fees are subject to review and approval of the court pursuant to the provision of 11 U.S.C. §§ 327 and 328," with no mention of § 330. The court thus assumes Feddersen does not intend to apply for approval of its fees on an hourly basis but only for approval of the $10,985 as a fixed fee. The court has insufficient information on which to determine that such a fee is more appropriate than compensation subject to approval under § 330. See Friedman Enters. v. B.U.M Int'I Inc. (In re B.U.M. Int'l, Inc.), 229 F.3d 824, 829 (9th Cir. 2000) ["[A] bankruptcy court may not conduct a § 330 inquiry into the reasonableness of the fees and their benefit to the estate if the court already has approved the professional's employment under 11 U.S.C. § 328."].

As a result of these evidentiary defects and confusion as to the proposed compensation, the court intends to deny the motion. In the alternative, the court will continue the hearing to permit the moving party to supplement the record. The court will hear the matter.

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1 The court raised these issues in its tentative ruling for the November 18, 2015 hearing on the debtor's motion to employ general bankruptcy counsel. This motion was filed almost a month later. The court expects the debtor to heed the concerns expressed by the court in earlier rulings.

42. 15-28060-D-11 SKB-1 — ACADEMY OF PERSONALIZED LEARNING, INC. — MOTION TO EMPLOY SARAH KALAS BANCROFT AS ATTORNEY 12-1-15 [136]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the debtor's motion to employ the law firm of Young, Minney & Corr, LLP ("YM&C") to represent it in pending litigation before the Public Employees Relations Board. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court has a concern about the evidence supporting the motion. Sarah Kalas Bancroft, associate with the firm, testifies that (1) she reviewed the list of creditors in this case and had a conflicts check run against the firm's list of clients and opposing parties to determine whether any actual or potential conflicts appeared to exist; and (2) she is unaware of any conflict, association, relationship or connection between the firm and the debtor, any creditors, any other parties-in-interest, or their respective attorneys and accounts. She adds that, to the best of her knowledge, the firm does not have any connection with the U.S. Trustee of any employee of the Office of the U.S. Trustee.

This testimony is insufficient. First, it is not up to the person applying to be employed to determine whether any conflicts appear to exist – that is a determination to be made by the court after consideration of all connections between the person (in this case, the firm) and the debtor, creditors, other parties-in-interest, their respective attorneys and accountants, the United States Trustee, and persons employed in the United States Trustee's office. As far as connections are concerned, Ms. Bancroft testifies only that she is unaware of any such connections (except with respect to the United States Trustee and employees). That one associate in the firm is unaware of any connections is insufficient. The firm proposed to be employed is required to disclose all connections, not just those the declarant happens to be aware of. See Fed. R. Bankr. P. 2014(a). Other than running a "conflicts check" of the list of creditors in the case against the firm's clients and opposing parties, there is no indication the firm conducted an investigation to determine whether the firm or any of its partners, associates, or employees have any connections with the debtors, creditors, or other parties listed in the rule.[1]

Second, the testimony that there are no such connections in inaccurate. Ms. Bancroft testifies later in the declaration that the firm has a pre-petition claim against the debtor in the amount of $31,733.26 for legal services rendered prior to the petition date. This is precisely the sort of connection that must be disclosed and in more detail than simply the amount of the pre-petition claim. Subsection 327(e) permits a debtor-in-possession to employ an attorney who is not a disinterested person; thus, an attorney who is a creditor, as special counsel if the attorney does not hold or represent an adverse interest. This does not excuse the attorney from making full disclosure of all connections, including the nature of pre-petition representation, fees paid, fees earned, and so on.

As a result of these evidentiary defects, the court intends to deny the motion. In the alternative, the court will continue the hearing to permit the moving party to supplement the record. The court will hear the matter.

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1 The court raised these issues in its tentative ruling for the November 18, 2015 hearing on the debtor's motion to employ general bankruptcy counsel. This motion was filed about two weeks later. The court expects the debtor to heed the concerns expressed by the court in earlier rulings.

43. 14-20064-D-7 GLENN GREGO — CONTINUED MOTION FOR SUMMARY JUDGMENT
15-2042 WR-35
GREGO V. PACIFIC WESTERN BANK — 8-7-15 [82]

Final ruling:

This is the plaintiff's motion for summary judgment. The defendant has filed opposition and the plaintiff has filed a reply. In the opposition, the defendant essentially asked the court to reconsider its ruling on the defendant's earlier motion to dismiss this adversary proceeding. Among other things, the defendant asked the court to reconsider its ruling on an issue involving § 523(a)(7) of the Bankruptcy Code, or in the alternative, to defer a ruling on the motion pending the outcome of a case pending before the Ninth Circuit Court of Appeals on the same issue. The defendant stated that if the Ninth Circuit rules against the position taken by the defendant in this case, the defendant will withdraw its claim in this case, which would moot this adversary proceeding.[1] The court previously continued the hearing on this motion to this date to allow a later assessment of the status of the appeal in the other case. The defendant has advised the court that the appeal is set for oral argument on February 11, 2016 and has requested the court to continue this hearing until sometime after that date.

The issue as presented in this case is squarely before the court of appeals in that case, such that the outcome of the appeal would be decisive on at least one of the key issues in this case. Thus, the court will continue this hearing to March 9, 2016 at 10:00 a.m. to allow time for the Ninth Circuit to issue its ruling. No appearance is necessary.

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1 To be clear, the defendant stated unequivocally at one point in its opposition that if the Ninth Circuit rules against its position, the defendant will withdraw its claim. See Defendant's Opp., filed Sept. 9, 2015, at 2:19. Later, however, the defendant indicated it would withdraw its claim unless this court found in its favor on an alternative issue. See id. at 11:27, n

44. 14-27267-D-7 SARAD/USHA CHAND — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND MOTION TO EXTEND TIME TO FILE OBJECTIONS TO THE DEBTORS' CLAIMS OF EXEMPTIONS
HSM-7 — 12-3-15 [194]

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 time to file objections to the debtors' claims of exemptions is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

45.	14-27267-D-7 HSM-8	SARAD/USHA CHAND	MOTION TO COMPEL 12-11-15 [199]
46.	14-27267-D-7 RLG-4	SARAD/USHA CHAND	MOTION BY ROBERT L. GOLDSTEIN TO WITHDRAW AS ATTORNEY 11-10-15 [182]
47.	14-23368-D-7 JWR-1	JESSE M. LANGE DISTRIBUTOR, INC.	CONTINUED MOTION FOR COMPENSATION FOR JOHN W. REGER, CHAPTER 7 TRUSTEE 10-19-15 [124]

Tentative ruling:

This is the trustee's motion for a first and final allowance of compensation in this case. By way of a tentative ruling for the initial hearing, on December 9, 2015, the court noted that the moving party had failed to serve roughly half the creditors who have filed claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g), and failed to serve at least two of them at all. The court continued the hearing to allow the moving party to file a notice of continued hearing and serve it on the parties not previously served or not previously served correctly.

The moving party filed an amended notice of hearing. However, the proof of service, DN 131, does not indicate that it was served. Instead, the proof of service evidences service of the "Notice of Hearing, [etc.]"; that is, the original notice of hearing, not the amended one. The court will continue the hearing one last time to permit the moving party to either (1) file a corrected proof of service if in fact the amended notice of hearing was the one served on December 14, 2015; or (2) file a second amended notice of hearing, serve it, and file a proof of service. The court will hear the matter.

48. 15-29070-D-7 DARIUS BROOKS
MDZ-1
NATIONSTAR MORTGAGE, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-10-15 [22]

Final ruling:

This matter is resolved without oral argument. This is Nationstar Mortgage, LLC'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.

49. 13-23371-D-11 JUAN/MARGARITA RAMIREZ
TCS-11

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICES OF TIMOTHY C. SPRINGER FOR NANCY D. KLEPAC, DEBTORS' ATTORNEY(S)
12-2-15 [269]

Tentative ruling:

This is the motion of Nancy D. Klepac (the "Applicant")[1] for approval of compensation for services rendered to the debtors during this chapter 11 case. The United States Trustee has filed opposition and the Applicant has filed a reply. For the following reasons, and with a significant contingency, the court is prepared to grant the motion in part.

The contingency is this. The motion states, "The Debtors have no objection and agree that the fee application is reasonable (see Exhibit E)." Exhibit E is a document entitled "Client Approval of Fee Application," which includes signature blocks for each of the debtors and which states they have received and reviewed the fee application and have no objections to it. The problem is that the signature blocks are blank. The United States Trustee pointed this out in opposition to the motion; the Applicant did not mention it in her reply. The Applicant will need to apprise the court of the debtors' position on the motion. The following discussion and the court's ruling are contingent on the debtors' consent. If the debtors do not consent, the court will entertain their opposition.

The Applicant seeks approval of fees totaling $53,880 and costs of $420, for total compensation of $54,300. First, the United States Trustee objects to fees totaling $990 incurred in reviewing and responding to the United States Trustee's motion for the court to determine the reasonable value of the services performed by the debtors' counsel. The United States Trustee sees no benefit to the estate or the debtors from those services. Instead, the services were made necessary only by the Applicant's failure to file a fee application in the case. The Applicant indicates in her reply she had intended to redact the fees for those services. Accordingly, the court will disallow $990 of the fees sought.

Second, the United States Trustee objects to fees totaling $10,080 as too high. This is the total of fees charged by the Applicant in connection with the debtors' monthly operating reports. The United States Trustee believes those services might have been performed either by the debtors themselves or by a bookkeeper at a lower

rate than the $300 per hour charged by the Applicant. As an example, the United States Trustee refers to financial consultant Robert Greeley, whose services are well known to this court, and who charged $245 per hour for his services and $150 for his staff accountant for services in a recent case in another department of this court. The Applicant states in reply that she discussed the matter with the debtors at the outset of the case and urged them to use an accountant or similar professional, but that the debtors preferred to have her do the reports.

The court agrees with the United States Trustee that utilizing an attorney to prepare monthly operating reports is unnecessary and not cost-effective. Even if the debtors want an attorney to do the reports, debtors-in-possession have a fiduciary duty to their creditors to efficiently manage the estate, and counsel for debtors-in-possession have a duty to advise the debtors that the estate must be managed by the appropriate professionals, so as not to unnecessarily deplete estate assets. Attorneys may decide to prepare the monthly operating reports, but in doing so, they take the risk their compensation may be reduced from the amounts requested. In this case, the court finds that the debtors' monthly operating reports could have been prepared by a bookkeeper and that a reasonable hourly rate for those services would have been $150. Thus, except for the finalizing and filing of the reports, discussed below, the court will disallow the Applicant's fees for the monthly operating reports in any amount over $150 per hour. Except for $2,010 billed for finalizing and filing the reports, the Applicant billed a total of $8,070 for her services for the reports. Reducing the hourly rate to $150 for those services will result in disallowance of $4,035 of the requested fees.

The Applicant's services for each monthly operating report included, in the following order, reviewing the debtors' financial documents and bank statements, drafting the report, contacting the debtors for their review and signature, and finalizing and filing the reports. Until the end of the case, when the Applicant did several reports at once, the Applicant always billed 0.5 hours, or $150, for finalizing and filing the reports after contacting the debtors to review and sign them. The court assumes the debtors had reviewed and signed the reports before the "finalizing and filing" took place, and thus, that those services were in the nature of secretarial tasks which are not compensable. See Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994). Thus, the court will disallow the fees for finalizing and filing the reports, a total of $2,010 for 6.7 hours.

Finally, the United States Trustee objects that several entries in the Applicant's timesheets are too vague to determine how the services benefitted the estate. The United States Trustee points to 6.9 hours of services, or $2,070, for email discussions with the debtors or a third party, with no description of what was discussed, why, or how the estate benefitted. The United States Trustee cites the entries in the task billing portion of the timesheets listing services in connection with "Oppositions/Objections." The court agrees with the United States Trustee that the entries in the task billing portion of the timesheets under that heading are too vague to allow the court to assess the reasonableness of the time spent.

However, when the same entries are viewed in the context of the chronological listing, the subjects of the discussions become clearer. For example, the entries that read "E-mail Discussion CitiMortgage" appear to pertain to the debtors' motion to value collateral of CitiMortgage or to CitiMortgage's opposition. And the entries "E-mail Discussion with RCO" likely refer to someone at RCO Legal, which represented the Bank of New York Mellon in opposing one of the debtors' motions to value collateral. The better practice would have been for the Applicant to identify the individual she spoke with or emailed, as well as the subject of the discussion;

however, the court is not convinced in this instance, given the amounts involved (most of the entries are under 0.4 hours), that the fees charged are unreasonable.

Finally, in the exercise of its independent duty to assess the reasonableness of the fees, the court will disallow the fees for the services of the Applicant's paralegal, at $150 per hour, for drafting proofs of service, a total of $600. Those services were secretarial in nature and not compensable. The court will also disallow fees for attorney time, at $300 per hour, for drafting a "motion to substitute attorney" and an "order on substitution motion," 1.0 and 0.4 hours, respectively, for a total of $420. Those documents do not appear in the court's docket. (There is a two-sentence substitution of attorney.)

For the reasons stated above, the court will disallow the following sums: $990, $4,035, $2,010, $600, and $420. Contingent on the debtors having no opposition, the court finds that the balance of the requested fees, $45,825, plus costs of $420 are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). Accordingly, the motion will be granted in part and the court will approve compensation in the total amount of $46,245. The court will hear the matter.

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1 The title of the motion and its opening sentence define the applicant as Nancy D. Klepac. However, the prayer states that the Law Offices of Timothy D. Springer is seeking approval of the compensation, and it was the Law Offices of Timothy C. Springer whose employment was approved by the court. The court assumes the reference to Ms. Klepac as the applicant derives only from the fact that she is the attorney with the Law Offices of Timothy C. Springer who performed the services.

50.	13-23371-D-11 UST-2	JUAN/MARGARITA RAMIREZ	CONTINUED MOTION FOR REVIEW OF FEES 9-22-15 [247]

51.	15-27874-D-7 TOG-1	SERGIO RAMIREZ AND ROSALBA DE RAMIREZ	MOTION TO CONVERT CASE TO CHAPTER 13 12-10-15 [17]

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 convert case to Chapter 13 is supported by the record. As such the court will grant the motion and the case will be converted to a case under Chapter 13 by minute order. No appearance is necessary.

52. 15-27284-D-11 CONSOLIDATED RELIANCE, INC. — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 9-16-15 [1]

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

53. 15-27284-D-11 NII-1 ANCHOR FUND, LLC VS. CONSOLIDATED RELIANCE, INC. — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 11-20-15 [106]

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

Tentative ruling:

This is the motion of the Anchor Funding LLC ("Anchor") for relief from stay pertaining to the real property commonly referred to 1440 Lisbon Lane, Pebble Beach, California (the "Property"). Anchor asserts there is no equity in the Property and that the Property is not necessary for an effective reorganization; accordingly, relief from stay is required under Bankruptcy Code ("Code") § 362(d)(2). Additionally, Anchor asserts that its interest in the Property is not adequately protected and relief from stay is appropriate under Code § 362(d)(1). The debtor has filed opposition to the motion and alleges that Anchor has not made a sufficient evidentiary record to establish there is no equity in the Property and that the Property is necessary for an effective reorganization; and the debtor further asserts that as a result of Anchor taking action against a reserve account, Anchor has waived or lost its security interest in the Property (the "Objection").

Code § 362(d) requires the court to grant relief from stay when there is cause, including a lack of adequate protection (§ 362(d)(1)); and, when there is no equity in a property and the property is not necessary for an effective reorganization (§ 362(d)(2)). The standards for relief from stay under Code §§ 362(d)(1), (d)(2), are independent and alternative. Can-Alta Props., Ltd. V. States Sav. Mortg. Co. (In re Can-Alta Props., Ltd.), 87 B.R. 89,90 (9th Cir. BAP 1988). Code § 362(d)(2) provides that "the court shall grant relief from the stay . . . if - (A) the debtor does not have any equity in such property; and (B) such property is not necessary to an effective reorganization." Equity, for purposes of § 362(d)(2)(A), is the difference between the value of the property and all the encumbrances on it. Sun Valley Newspapers, Inc. V. Sun World Corp. (In re Sun Valley Newspapers, Inc.), 171 B.R. 71, 75 (9th Cir. BAP 1994) (citing Stewart v. Gurley, 745 F.2d 1194, 1196 (9th Cir. 1984).

Under the standard set by the Supreme Court in United Sav. Ass'n of Tex. V. Timbers of Inwood Forest Assocs., Ltd. ("Timbers") 484, U.S. 365; 108 S.Ct. 626 (1988), to establish that property is necessary for an effective reorganization under § 362(d)(2)(B), a debtor is required to show that "the property is essential for an effective reorganization that is in prospect . . . This means a reasonable prospect for a successful reorganization within a reasonable time." Timbers at 376

(internal quotations omitted); In re Dev., Inc., 36 B.R. 998, 1005 (Bankr. D. Haw. 1984) (cited with approval by Timbers). In addition, the debtor is required to show the plan proposed is not patently unconfirmable and has a realistic chance of being confirmed within a reasonable time. See Sun Valley Newspaper at 75.

Code § 362(g) provides that the party opposing relief from the stay has the burden of proof on all issues other than the debtor's equity in a property. Thus, once a movant establishes that a debtor has no equity in a property, "it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization." Timbers at 365. Again, this requires a showing that the Property is essential for an effective reorganization that is in prospect and that confirmation will occur within a reasonable time.

Stay litigation is limited in scope to issues of adequate protection, equity in the property, and whether the property is necessary for an effective reorganization. The validity of the claim, or contract underlying the claim, is not litigated during a relief from stay hearing. In re Johnson, 759 F.2d 738 (9th Cir. 1985). Stay relief hearings do not involve a full adjudication on the merits of the claims, defenses, or counter-claims, but simply a determination as to whether creditor has a colorable claim. In re Robins, 310 B.R. 626 (9th Cir. BAP 2004).

On October 13, 2015, the debtor filed its Amended Schedule A - Real Property, listing the "as is" value for the Property at $750,000. Also on October 13, 2015 the debtor filed its Amended D Schedule - Creditors Holding Secured Claims, which shows that the aggregate debt on the Property is in excess of $2,100,000. As such, the debtor's schedules show that there is no equity in the Property. In addition, the Objection states that "the creditor is undersecured." Thus, the debtor concedes that there is no equity in the Property (Objection at pg. 5, line 25). Accordingly, the court finds there is no equity in the Property for the purpose of Code § 362(d)(2)(A).

As a result, it is the debtor's burden to demonstrate by a preponderance of the evidence that the Property is necessary for an effective reorganization. To meet this burden the debtor must establish by a preponderance of the evidence that the Property is essential for an effective reorganization. This requires a showing of a reasonable prospect of a successful reorganization within a reasonable time.

The only evidence that the debtor has submitted in regard to this prong of Code § 362(d)(2) are two declarations of Rodney Sperry, who is an officer of the debtor. In addressing this issue, Mr. Sperry summarily concludes that the Property is necessary for a business reorganization because the debtor's business model is to purchase real properties that are in need of repair, enhance them and then sell them for a profit. Mr. Sperry then goes on to summarily conclude that if certain improvements were made to the Property, that the Property's value would be in excess of $2,850,000.

Noticeably absent from the debtor's evidentiary record is even the most general outline for a feasible plan of reorganization. Absent is any outline or explanation as to how the debtor intends to improve the Property for sale; whether the funds necessary to improve the Property would be by way of an unsecured loan or a priming loan;[1] a firm time-line for constructing the improvements; estimated costs for improvement of the Property; and even the most rough outline for a feasible Chapter 11 plan of reorganization that has a reasonable likelihood of being confirmed within a reasonable time.

Simply put, if the court were to accept Mr. Sperry's self-serving parroting that the Property is necessary for an effective reorganization as meeting the debtor's evidentiary burden under Code § 362(d)(2)(B), it would so water down this requirement as to make it virtually meaningless.

The issue as to whether Anchor has waived, or otherwise impaired, its lien rights on the Property is not appropriate for disposition in a motion for relief from stay. As indicated prior, pursuant to In re Johnston, a relief from stay motion is a summary proceeding where the court is to access whether the creditor's interest is adequately protected and whether there is equity in the property and the property is necessary for an effective reorganization.

Accordingly, the court finds that there is no equity in the Property and the debtor has not met its burden of demonstrating that the Property is necessary for an effective reorganization that is in prospect. Accordingly, Anchor is entitled to relief from stay.

The court will hear the matter.

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1 **The court notes that if the debtor anticipates that the money necessary for the improvements to the Property is to be acquired by way of a priming loan, this is something the court seriously questions the feasibility of.**

54.	15-27284-D-11 SSA-1	CONSOLIDATED RELIANCE, INC.	MOTION FOR FIXING RENT CLAIM AND ADMINISTRATIVE PRIORITY CLAIM AND/OR MOTION FOR FEES AND COSTS 11-30-15 [150]

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

Tentative ruling:

This is the motion of BAT Partners for a determination of the rent due under a lease of real property, either as a non-administrative or administrative rent claim,1 and for an award of attorney's fees and costs. The debtor has filed opposition. For the following reasons, the court intends to grant the motion in part.

According to the motion and supporting declaration of William Cristal, BAT Partners is a general partnership compromised of Mr. Cristal and his wife, Sharon Cristal. It is the lessor under a lease of real property commonly known as 629 High Tech Parkway, Oakdale, California. A copy of the lease is filed as an exhibit. The lessee is AAA Commercial, Inc., who BAT Partners alleges is a subsidiary of the debtor. The original six-month lease term expired February 24, 2014 and the parties have treated the tenancy as month-to-month since then. BAT Partners claims no rent has been paid since October of 2013, and therefore, that there is unpaid rent due in the amounts of $45,000 pre-petition (through September 15, 2015, 22.5 months) and $5,000 post-petition (2.5 months).

At best, the court is troubled by the debtor's opposition. In three different sections, the debtor contends the motion fails under § 503(b)(1)(A) (administrative claims), fails under § 365(d)(3) (performance of debtor's obligations under

unexpired lease of non-residential real property), and fails to establish a right to attorney's fees – all for the single reason that the debtor is not the lessee under the lease. As emphasized by the debtor, this is a fact BAT Partners admits. Thus, in the debtor's view, "there is no evidence that alleged rent has anything to do with preserving the estate, much less, any evidence that the rent is a necessary cost or expense" (Opp. at 3:2-3); "there simply is no requirement that the DIP pay rent on the alleged lease under Section 365(d)(3)" (id. at 3:9-10); and "the Motion is entirely lacking any evidence that could establish that the alleged attorney's fees are is [sic] an obligation of the DIP." Id. at 3:16-17. The debtor concludes that the alleged rent claim can be addressed through the claims process.

The record in this case reveals the following. The debtor listed AAA Commercial Inc. on its petition as a name used by the debtor within the last eight years. The debtor listed AAA Commercial, Inc. on its Schedule B as being 100% owned by the debtor, also indicating that "transfers to and from debtor are being reviewed" and that the "stock [is] held for [the] benefit of debtor by Sperry and Smith" (Rodney Sperry and Tracy Smith, the debtors' owners). In its statement of financial affairs, the debtor listed AAA Commercial as being in the service and repair business at the "address of debtor" between 2014 and 2015.[2] The debtor listed William Cristal on its Schedule G as a party to a "lease of real property at 629 Hitech Pkwy, Oakdale, California," adding: "rental payment of $1500 per month; Debtor's intent is to reject this lease and move out." The debtor failed to list the locations of its personal property assets, as required by Schedule B, but it is fair to assume the debtor does business out of the property that is the subject of the lease under which BAT Partners asserts its rent claims.

The day after this motion was filed, William Cristal filed proofs of claim for pre- and post-petition rent, Claim Nos. 34 and 35. He attached a copy of the BAT Partners lease to Claim No. 35 and copies of two checks to Claim No. 34. The checks are both drawn on an account of the debtor, not AAA Commercial, at Chase Bank and both appear to bear Tracy Smith's signature. The first check, chronologically, is dated September 6, 2013, is for $4,500, and is described as being for "Deposit and 1st Months Rent for AAA Building Lease"; the second is dated October 7, 2013, is for $2,000, and is described as being "Oct. Rent for AAA Building Lease."

The court concludes from these checks and from the evidence of the debtor's petition, schedules, and statement of affairs that the debtor either sublets the leased property from AAA Commercial, views itself as an alter ego of AAA Commercial (and/or vice versa), or is simply squatting on the property. In any event, the evidence is sufficient for the court to conclude that the debtor has occupied the property since the filing of the case. Mr. Cristal's testimony is sufficient to demonstrate that no rent has been paid since the petition was filed and, in the absence of contrary evidence, that the fair rental value of the property is $2,000 per month.[3] The court is prepared to grant the motion in part and allow BAT Partners an administrative claim in the amount of $2,000 per month from the petition date to the date BAT Partners leaves the premises.[4] The question of BAT Partners' general unsecured claim may be handled through the claims process. The court will hear the matter.

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1 The moving party uses this alternative language in its opening sentence; it is clear from the prayer, however, that it asserts both an administrative and a general unsecured claim.

2 Tracy Smith, the debtor's CEO, has testified that AAA Commercial, Inc. is

"wholly owned by the within Debtor in that Rod Sperry and [Smith] hold the shares of stock for the benefit of the Debtor" and that AAA "currently does not conduct any active business." Declaration of Tracy Smith, filed Nov. 24, 2015, DN 124, at 1:27-2:2.

3 The motion was noticed pursuant to LBR 9014-1(f)(1); the debtor elected not to submit any evidence.

4 The court notes that if the debtor is the lessee, its time to assume or reject the lease will expire on January 14, 2016. If the debtor is not the lessee, as the debtor so vehemently asserts, the court does not know under what theory the debtor is occupying the property to begin with.

55.	13-24087-D-7 SCB-3	LEO UNGUI AND VALARIE HARPER-UNGUI	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH HARPER-UNGUI ET AL. V. AMERICAN MEDICAL SYSTEMS, INC. ET AL. 12-15-15 [54]

Tentative ruling:

This is the trustee's motion for approval of a compromise of federal district court litigation that was commenced prior to the filing of this case in March of 2013. No opposition has been filed. However, for the following reasons, the court will determine whether the compromise should be approved only after the court has reviewed the settlement terms and settlement documents, which the trustee has agreed to permit, in camera, and then, the court is likely to approve the compromise only if it will result in full payment of all allowed claims, including any late claims that may be filed prior to the trustee's distribution, with interest.[1] It appears from the moving papers, however, that the compromise will not have that result.

The lawsuit was commenced on behalf of joint debtor Valarie Harper-Ungui in February of 2013 by attorneys the trustee has since employed as special counsel ("Special Counsel"). The debtors commenced this chapter 7 case in March of 2013; they did not disclose the lawsuit or the claims that are the subject of the lawsuit and did not claim an exemption in either. The lawsuit is part of multi-district litigation on behalf of similarly-situated plaintiffs arising from the use of allegedly defective transvaginal mesh products. The compromise is "part of an aggregate settlement of multiple lawsuits that Special Counsel is also handling." Trustee's Memo. at 3:15-16. The trustee and Special Counsel state that the defendants have insisted the terms of the compromise, together with the settlement documents, remain confidential. The defendants have insisted on confidentiality in all settlements in the litigation. The trustee is prepared, however, to disclose the terms to the court in camera and to permit the court to review the settlement documents. The trustee states that joint debtor Valarie Harper-Ungui approves of the compromise.

The trustee has agreed to reveal the terms to the court in camera, but not to reveal them to creditors. The trustee has submitted no authority for the proposition that a bankruptcy court may approve a compromise under Fed. R. Bankr. P. 9019(a) when the terms are kept confidential from either the court or creditors, and the court has found none. In fact, it appears the only authority is to the contrary. For example, in In re Apply 2 Save, Inc., 2011 Bankr. LEXIS 1374 (Bankr. D. Idaho 2011), the trustee filed several Rule 9019(a) motions, but sought to file his supporting memoranda under seal, claiming they contained "sensitive information" regarding the parties to the lawsuits. The trustee did agree to the court reviewing

the affidavits in camera. The court, having reviewed the affidavits, denied the motion to seal and the compromise motions. Id. at *12.

As to the motion to seal, the court first found no reason to believe the terms of the settlement fell within the type of protected matter covered by § 107(b) of the Code (trade secrets; confidential research, development or commercial information; scandalous or defamatory matter). Id. at *3-4. More generally,

> the idea of sealing the record utilized by a trustee to support the proper exercise of his discretion in settling causes of action of the estate is incompatible with the authorities governing approval of settlements discussed below. In material part, a trustee – as fiduciary to creditors – is required to explain why he proposes a compromise and the reasons he chooses to exercise his discretion in a particular way. One of the factors to be considered . . . is a 'proper deference' to the views of creditors of the estate as to the suggested settlement. One must wonder how creditors can even form those views in the absence of information due to a 'sealed' factual record.

Id. at *5.

In addition, the court found the notion of sealing the record to be "inconsistent with the general proposition that the judicial records and processes of the federal courts are open and public." Id. The court cited § 107(a) of the Code [2] and Ninth Circuit law on sealing judicial records,[3] and denied the trustee's motion to seal the affidavits. Id. at *8. Turning to the Rule 9019(a) motion, the court discussed earlier decisions in which it had held that "[w]hile a trustee's discretion in compromising disputes is readily acknowledged by this Court, a trustee's evaluation of the merits and wisdom of settlement is not alone determinative. The Court is 'not permitted to act as a mere rubber stamp' but, rather, must make an independent determination that the compromise is fair and equitable." Id. at *9-10 (citations omitted). Thus, "the trustee is required to appropriately weigh and evaluate all the factors relevant to the exercise of his business judgment. He is then required to explain those factors and how they were evaluated, so that the Court can perform its duty of independent review to find the settlement fair and equitable, and confirm that the trustee's decision rests within the range of his discretion." Id. at *11. In short, the trustee cannot merely ask the court to trust her, even if she recites the A & C Properties [4] factors. Id. at *11-12. Because the trustee in that case had done nothing more than parrot those factors and ask the court to "reflexively bless the trustee's judgment, without attempting to articulate how and to what facts that judgment was applied," the court denied the compromise motion. Apply 2 Save, 2011 Bankr. LEXIS 1374, at *12.

In this case, the trustee discusses the Woodson [5] factors in the most general terms. As to the probability of success, the memorandum of points and authorities lists the various causes of action, states that the defendant denies all the allegations and raises numerous defenses, and concludes that it is difficult to predict the outcome of the litigation. In terms of collectibility of a judgment, the memorandum states the trustee is not aware of any difficulties that might arise other than "the usual judgment collection issues." As for the expense, inconvenience, and delay associated with the litigation, Special Counsel predicts litigation costs would range between $200,000 and $500,000 and estimates the trial is a year or more away. It appears the $200,000 to $500,000 estimate is for all the cases Special Counsel is handling in the litigation, not just for Valarie Harper-Ungui. Finally, in terms of the paramount interest of creditors, the memorandum

states that "[t]he compromise allows [the trustee] to recover an amount that will satisfy some of the scheduled debts and administrative expenses without the uncertainty or delay of continued litigation" and that "the Compromise results in a significant savings in time and administrative expense by avoiding litigation." P. & A., at 6:25-7:2 (emphasis added). The analysis could hardly be more conclusory.

Further, this language leaves the court wondering about the joint debtor's approval of the compromise as it suggests she will receive a portion of the settlement proceeds. Why is the compromise paying the joint debtor anything when she has not claimed an exemption and when the compromise will satisfy only some of the scheduled debts? If creditors will not be paid in full, with interest, the court likely will not approve the compromise unless the terms are disclosed to creditors so they can weigh in as to whether their paramount interest is being served. That the defendants are insisting on confidentiality does not come close to the sort of compelling reason required by the Ninth Circuit to seal a judicial record. And it does not suffice to permit the court to simply bless the trustee's judgment, even when that judgment is supported by her special counsel's opinion that the compromise is reasonable. Permitting that result would mean obliterating the court's role and that of creditors in determining whether a compromise is fair and equitable.

The court will hear the matter.

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1 The only claims filed in this case are unsecured claims. Of the $24,301 in unsecured claims scheduled by the debtors, the holders of approximately $18,000 worth of claims have filed proofs of claim. The claims bar date has run.

2 "Except as provided in subsections (b) [see above] and (c) [information that could lead to identity theft] and subject to section 112 [names of minor children], a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." § 107(a).

3

> Unless a particular court record is one "traditionally kept secret," a "strong presumption in favor of access" is the starting point. . . . A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the "compelling reasons" standard. . . . That is, the party must "articulate[] compelling reasons supported by specific factual findings," . . . that outweigh the general history of access, and the public policies favoring disclosure, such as the "'public interest in understanding the judicial process.'" . . . In turn, the court must "conscientiously balance[] the competing interests" of the public and the party who seeks to keep certain judicial records secret. . . . After considering these interests, if the court decides to seal certain judicial records, it must "base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture."

Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

4 In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986).

5 In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

56.	13-24087-D-7 SCB-4	LEO UNGUI AND VALARIE HARPER-UNGUI	MOTION FOR COMPENSATION BY THE LAW OFFICE OF BLASINGAME, BURCH, GARRARD & ASHLEY, P.C. FOR ANDREW J. HILL, III, SPECIAL COUNSEL(S) 12-15-15 [60]

Tentative ruling:

This is the trustee's motion for authority to compensate her special litigation counsel, Andrew J. Hill, III, of Blasingame, Burch, Garrard & Ashley, P.C. ("BBGA"), and Daniel C. Chapman, III, of Dan Chapman & Associates, LLC ("DCA") (collectively, "Special Counsel"), for their services in the prosecution of federal district court litigation that was commenced on behalf of joint debtor Valarie Harper-Ungui prior to the filing of this chapter 7 case in March of 2013. No opposition has been filed. However, for the following reasons, the court will determine whether the compensation should be approved only after the court has reviewed the terms of a proposed compromise of the litigation and the settlement documents, which the trustee has agreed to permit.

As with the motion to approve the compromise, also on this calendar, the trustee has not disclosed the amount of Special Counsel's proposed compensation, on the basis that the defendants have insisted on keeping the settlement terms confidential. All the court and creditors know is that the compensation will be 40% of all amounts collected in the settlement, plus reimbursement of costs totaling $890.11, and that BBGA and DCA will split the fees on a 2/3-1/3 basis. The 40% figure and the 2/3-1/3 split were disclosed in the trustee's application to employ Special Counsel.

In support of the present motion, the trustee testifies that she supports the amount of compensation requested. Andrew J. Hill, III, of BBGA, and Milton F. Eisenberg, II, of DCA, testify that they have reviewed and analyzed over 1000,000 pages of documents, deposed key witnesses, hired experts and prepared them for deposition, deposed the defendants' experts, and prepared and defended evidentiary motions and motions for summary judgment. They add that these efforts led to the pending settlement, and that it would cost, "at best," $200,000 to $500,000 to bring the lawsuit to trial.

If the court approves the compromise, the court is likely to approve the fees and costs requested by Special Counsel. For the reasons discussed in the court's ruling on the trustee's motion to approve the compromise, which the court incorporates herein, the court will not consider approving the compromise until it has reviewed the terms of the compromise, along with the settlement documents.

The court will hear the matter.

57. 15-91087-D-11 SPYGLASS EQUITIES, INC.
CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
11-10-15 [1]

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

58. 15-27292-D-7 BC OIL LOGISTICS, LLC
ORDER TO SHOW CAUSE - FAILURE TO FILE DOCUMENTS
12-7-15 [26]

Final ruling:

Based on the declaration filed by the attorney for the petitioning creditors, this order to show cause is discharged by minute order and the case will proceed. No appearance is necessary.

59. 15-27732-D-7 JOSEPH/LYDIA CASIANO
CJO-1
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
12-29-15 [19]

60. 10-42050-D-7 VINCENT/MALANIE SINGH
GJH-12
MOTION FOR COMPENSATION FOR GONZALES AND SISTO, LLP, ACCOUNTANT(S)
12-22-15 [611]

61.	10-42050-D-7 GJH-11	VINCENT/MALANIE SINGH	MOTION FOR ADMINISTRATIVE EXPENSES 12-22-15 [606]
62.	11-47176-D-7 DNL-5	NICK/KIMBERLY DUGGINS	MOTION TO APPROVE STIPULATION RE: EXEMPTIONS 12-22-15 [69]
63.	15-29099-D-7 FF-2	RAJINDER/MEENA WALIA	MOTION TO COMPEL ABANDONMENT 12-23-15 [20]
64.	15-27284-D-11 APN-1 THE LEGACY GROUP, INC. VS.	CONSOLIDATED RELIANCE, INC.	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-30-15 [227]