

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

January 22, 2014 at 10:00 a.m.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

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1. 13-32111-D-7 JAY MAHARAJ MOTION TO AVOID LIEN OF FIA  
ADR-1 CARD SERVICES, N.A.

Final ruling: 12-19-13 [14]

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

2. 11-46117-D-7 RUBEN/NANCY FERNANDEZ MOTION FOR ASSIGNMENT ORDER AND  
12-2024 KY-3 ORDER RESTRAINING JUDGMENT  
RENTRAK CORPORATION V. 12-16-13 [61]  
FERNANDEZ ET AL

ADV. CASE CLOSED 9/24/12

3. 13-34118-D-7 CURTIS/DOLORES MINATRE MOTION FOR RELIEF FROM  
MRG-1 AUTOMATIC STAY AND/OR MOTION  
THE BANK OF NEW YORK MELLON FOR ADEQUATE PROTECTION  
VS. 12-18-13 [13]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

4. 13-20823-D-11 MELVIN/DARLENE SHIMADA MOTION TO DETERMINE  
FRB-1 MODIFICATIONS TO DEBTORS' PLAN  
OF REORGANIZATION DATED AUGUST  
9, 2013, ADVERSELY CHANGE THE  
TREATMENT OF GENERAL UNSECURED  
CLAIMS, ETC.  
12-23-13 [275]

**Final ruling:**

The hearing on this motion is continued to today's 1:00 p.m. calendar. The court will use this hearing as a preliminary hearing on this motion. The court also intends to use this hearing as a general status conference on the overall direction of this case. Counsel for the debtors and for City National Bank are encouraged to personally appear at the hearing.

5. 13-20823-D-11 MELVIN/DARLENE SHIMADA MOTION FOR ORDER PERMITTING  
FRB-2 CITY NATIONAL BANK TO CAST A  
BALLOT REJECTING DEBTORS' PLAN  
OF REORGANIZATION AFTER  
EXPIRATION, ETC.  
12-23-13 [278]

**Final ruling:**

The hearing on this motion is continued to today's 1:00 p.m. calendar. The court will use this hearing as a preliminary hearing on this motion. The court also intends to use this hearing as a general status conference on the overall direction of this case. Counsel for the debtors and for City National Bank are encouraged to personally appear at the hearing.

6. 13-28732-D-7 RONALD CORILONI MOTION TO DISMISS ADVERSARY  
13-2312 GTB-1 PROCEEDING  
WETHERBEE ET AL V. CORILONI 11-4-13 [8]  
**Final ruling:**

This is the motion of the defendant (the "moving party") to dismiss this adversary proceeding pursuant to Fed. R. Civ. P. 8(a)(2), 9(b), and 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7008(a), 7009, and 7012(b), respectively. The plaintiff has not filed opposition. However, the court is not prepared to consider the motion at this time because there is not sufficient proof of service in the record. The proof of service of the motion, DN 11, is signed under oath by the defendant's attorney, and states that "[o]n November 4, 2013, I will deposit in the U.S. mail or other commercial service . . ." copies of the motion and notice of hearing in a sealed envelope with first-class postage prepaid and addressed to the plaintiff's name and the address. There is no evidence that service was actually made, only that the debtor's attorney, at the time he signed the proof of service, intended to make service.

The court will not accept an amended or corrected proof of service at this time, because the same would not be in compliance with LBR 9014-1(e)(2), which requires that a proof of service be filed not more than three days after the documents that have been served are filed. Thus, the court will continue the hearing to March 5, 2014, at 10:00 a.m., the moving party to file a notice of continued hearing no later than February 19, 2014, and to serve it, along with the motion, on the plaintiff no later than February 19, 2014. The notice of continued hearing may be a notice pursuant to LBR 9014-1(f)(1) or (f)(2), depending on whether the moving party gives 14 days' or 28 days' notice. The moving party shall file a proof of service of the motion and the notice of continued hearing not more than three days after the date the notice of continued hearing is filed.

The hearing will be continued by minute order. No appearance is necessary on January 22, 2014.

7. 13-20833-D-11 RAVINDER GILL CONTINUED MOTION TO CONVERT  
UST-1 CASE FROM CHAPTER 11 TO CHAPTER  
7 OR MOTION TO DISMISS CASE  
11-7-13 [59]

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

8. 13-24144-D-7 THE CALIFORNIA PRIMARY MOTION FOR RELIEF FROM  
HPS-1 CARE MEDICAL GROUP, INC. AUTOMATIC STAY  
DAMERON HOSPITAL ASSOCIATION 12-20-13 [41]  
VS.

9. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO COMPEL ABANDONMENT  
12-24-13 [442]

**Final ruling:**

The hearing on this motion is continued to February 5, 2014 at 10:00 a.m. No appearance is necessary on January 22, 2014.

10. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO SUBSTITUTE ATTORNEY  
12-2358 KBP-2 12-12-13 [65]  
BURKART V. MAKUND

**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 substitute attorney is supported by the record. As such the court will grant the motion to substitute attorney. Moving party is to submit an appropriate order that includes the contact information required by State Bar rules. No appearance is necessary.

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

**Final ruling:**

The hearing on this motion is continued to February 5, 2014 at 10:00 a.m. No appearance is necessary on January 22, 2014.

12. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO SUBSTITUTE ATTORNEY  
12-2492 KBP-2 12-12-13 [61]  
BURKART V. PRASAD

**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 substitute attorney is supported by the record. As such the court will grant the motion to substitute attorney. Moving party is to submit an appropriate order that includes the contact information required by State Bar rules. No appearance is necessary.

13. 13-33560-D-7 DARRYL ELAM MOTION FOR RELIEF FROM  
EEW-1 AUTOMATIC STAY  
KEVIN MUDRON VS. 12-5-13 [24]

14. 09-29162-D-11 SK FOODS, L.P. AMENDED MOTION FOR COMPENSATION  
09-2692 RJ-5 FOR RICHARD S. E. JOHNS,  
SHARP V. SSC FARMS I, LLC ET DEFENDANTS ATTORNEY(S), FEES:  
AL \$3,499.76, EXPENSES: \$0.00  
12-12-13 [1047]

**Final ruling:**

**The hearing on this motion is continued to February 5, 2014 at 10:00 a.m. No appearance is necessary on January 22, 2014.**

15. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION BY THE  
FBM-3 LAW OFFICE OF FARELLA BRAUN +  
MARTEL, LLP FOR DEAN M.  
GLOSTER, DEBTOR'S ATTORNEY(S),  
FEE: \$2,379,908.50, EXPENSES:  
\$86,962.35  
12-24-13 [4608]

**Final ruling:**

**The hearing on this motion is continued to February 5, 2014 at 10:00 a.m. No appearance is necessary on January 22, 2014.**

16. 09-29162-D-11 SK FOODS, L.P. CONTINUED MOTION TO STRIKE  
10-2016 SH-16 PLEADINGS, FOR ENTRY OF  
SHARP ET AL V. SKF AVIATION, DEFAULT, AND FOR LEAVE TO SEEK  
LLC ET AL ENTRY OF DEFAULT JUDGMENT  
11-13-13 [586]

**Tentative ruling:**

**This is the motion of the plaintiff, who is the chapter 11 trustee in the underlying parent case in which this adversary proceeding is pending (the "trustee"), to strike the pleadings filed by defendants SKF Aviation, LLC, and CSSS, L.P., dba Central Valley Shippers (the "defendants") in this adversary proceeding, for entry of their defaults, and for leave to seek entry of a default judgment against them. The motion was brought on the ground that a limited liability company**

and a limited partnership, respectively, the defendants are not permitted to participate in this adversary proceeding in propria persona, and that the defendants have failed to obtain counsel to represent them in this proceeding since the time their most recent counsel withdrew from their representation, on May 11, 2012. It is clear the defendants are entities that are not permitted to participate in this adversary proceeding without an attorney. LBR 1001-1(c), incorporating Local District Court Rule 183(a) ["A corporation or other entity may appear only by an attorney."]; see D-Beam, Ltd. P'ship v. Roller Derby Skates, Inc., 366 F.3d 972, 973-74 (9th Cir. 2004) (citation omitted) ("It is a longstanding rule that 'corporations and other unincorporated associations must appear in court through an attorney.'").

The motion was brought pursuant to LBR 9014-1(f)(1). The motion was initially set for hearing on December 11, 2013; the court continued the hearing, however, to permit the trustee to serve the defendants at their own addresses, to the attention of an officer or managing or general agent. The trustee has now made such service. The trustee's second amended notice of hearing, which informed the defendants that the hearing would be held this date, January 22, 2014, was a notice pursuant to LBR 9014-1(f)(1); that is, opposition, if any, was due no later than January 8, 2014. No opposition was filed, and neither defendant has filed a substitution of attorney or otherwise made an appearance in this adversary proceeding, either through counsel or otherwise.

According to the motion, the defendants have now been unrepresented by counsel since May of 2012, a state of affairs that renders them unable to take steps to put on a defense. The defendants have failed to file any opposition to the motion. Assuming the trustee has a satisfactory response to the court's one concern, discussed below, the court concludes that in this situation, the remedies sought by the trustee are appropriate, and the motion will be granted. Case law makes clear that entry of default is an appropriate remedy for an entity defendant's failure to be represented by counsel, where local rules so require. See Employee Painters' Trust v. Ethan Enters., 480 F.3d 993, 998 (9th Cir. 2007); United States v. High Country Broadcasting Co., 3 F.3d 1244, 1245 (9th Cir. 1993).

The only difficulty is that, upon closer examination of the notice of hearing, supporting declaration, and motion of the defendants' counsel, Farella Braun + Martel LLP ("Farella"), to withdraw as counsel (DNs 472-474), as well as the order thereon (DN 544), the court has been unable to find the name of defendant CSSS, L.P., dba Central Valley Shippers ("CSSS"), anywhere in the moving papers or the order. Thus, so far as the court can tell, the record contains no concrete evidence that Farella has withdrawn as counsel for CSSS, and the court is concerned about striking an answer filed by that defendant on the ground the defendant is unrepresented if in fact it is still represented.

The court will hear the matter.

17. 13-35762-D-12 JOSE DASILVA

STATUS CONFERENCE RE: CHAPTER  
12 VOLUNTARY PETITION  
12-17-13 [1]

18. 12-20571-D-7 PRITPAUL SAPPAL

MOTION TO AVOID LIEN OF MILER  
AND BECK  
12-16-13 [118]

**Final ruling:**

This is the debtor's motion to avoid a judicial lien held by Miller & Beck (now, apparently, held by MillerHauser Law Group LLP - see below). The motion will be denied for the following reasons. First, the motion and all the moving papers are signed by the debtor, and in the upper lefthand corner of each document, the debtor has listed his own name and address and himself as "pro per," whereas the debtor is not representing himself in propria persona in this case. He is represented by attorney George A. Murphy. Although the debtor filed a substitution of attorney, signed by both himself and Mr. Murphy, the same day the debtor filed this motion, the court's local rules do not permit an attorney to withdraw leaving the client in propria person without leave of court on noticed motion. LBR 2017-1(e). A substitution of attorneys is effective as a means of withdrawing from the case only if another attorney is substituted in place of the attorney who is withdrawing. LBR 2017-1(h). Thus, although Mr. Murphy has now filed a motion to withdraw as the debtor's counsel (which is also on this calendar), at the time the motion was filed, Mr. Murphy was the debtor's attorney of record. A debtor may not be represented by an attorney in a bankruptcy case and, at the same time, file motions as a debtor in propria persona.

Second, the debtor failed to serve Miller & Beck or its successor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Miller & Beck only through the attorney who obtained its abstract of judgment, and failed to serve Miller & Beck (or its successor) directly, to the attention of an officer, managing or general agent, or agent for service of process, as required by Fed. R. Bankr. P. 7004(b)(3). The attorney who obtained the abstract of judgment, and who was served with this motion, has appeared in this bankruptcy case on behalf of Miller & Beck (which the attorney indicated is "now known as MillerHauser Law Group LLP") in opposition to an earlier motion to avoid the same judicial lien that is the subject of this motion. However, whereas subd. (1) of Fed. R. Bankr. P. 7004(h) requires service on an FDIC-insured institution through an attorney, if any, who has appeared in the case on behalf of the institution, there is no similar provision in Fed. R. Bank. P. 7004(b)(3) for entities that are not FDIC-insured institutions. In short, the debtor failed to effect proper service on Miller & Beck (or its successor, if its successor is MillerHauser Law Group LLP). (The court notes that, although the California

Secretary of State's office shows Miller & Beck, P.C. as a dissolved corporation, and although the same office does not show MillerHauser Law Group LLP as having registered with that office, there are indications on the Internet and the California State Bar's website that MillerHauser Law Group exists as an entity and has its own address.)

Finally, there are several discrepancies in the moving papers with regard to the date of the hearing. The motion gives the hearing date as December 11, 2013. The notice of hearing gives the hearing date as January 22, 2014 in the caption but December 22, 2014 on the first page of the text. The notice of hearing states, at pages 1-2, that opposition must be filed "at least 14 days preceding the date of hearing on or before November 08, 2014." Notice, filed Dec. 16, 2013, at 2:1-2.

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

19. 12-20571-D-7 PRITPAUL SAPPAL MOTION TO AVOID LIEN OF CCM  
CORP.  
12-16-13 [125]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by CCM Corporation ("CCM"). The motion will be denied for the following reasons. First, the motion and all the moving papers are signed by the debtor, and in the upper left-hand corner of each document, the debtor has listed his own name and address and himself as "pro per," whereas the debtor is not representing himself in propria persona in this case. He is represented by attorney George A. Murphy. Although the debtor filed a substitution of attorney, signed by both himself and Mr. Murphy, the same day the debtor filed this motion, the court's local rules do not permit an attorney to withdraw leaving the client in propria person without leave of court on noticed motion. LBR 2017-1(e). A substitution of attorneys is effective as a means of withdrawing from the case only if another attorney is substituted in place of the attorney who is withdrawing. LBR 2017-1(h). Thus, although Mr. Murphy has now filed a motion to withdraw as the debtor's counsel (which is also on this calendar), at the time the motion was filed, Mr. Murphy was the debtor's attorney of record. A debtor may not be represented by an attorney in a bankruptcy case and, at the same time, file motions as a debtor in propria persona.

Second, there are several discrepancies in the moving papers with regard to the date of the hearing. The motion gives the hearing date as December 11, 2013. The notice of hearing gives the hearing date as January 22, 2014 in the caption but December 22, 2014 on the first page of the text. The notice of hearing states, at pages 1-2, that opposition must be filed "at least 14 days preceding the date of hearing on or before November 08, 2014." Notice, filed Dec. 16, 2013, at 2:1-2.

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

**Tentative ruling:**

This is the trustee's motion for approval of her compromise with Kanwaljit Kaur Sappal, the debtor's spouse. The debtor has filed opposition, and the trustee has filed a reply. For the following reasons, the motion will be granted.

The compromise would resolve the trustee's pending adversary proceeding against Kanwaljit Kaur Sappal ("Kanwaljit"),<sup>1</sup> AP No. 12-2593, and would result in the administration of all remaining assets of the estate (except, perhaps, the property the parties refer to as the "Georgia Street property," as discussed below). In the adversary proceeding, the trustee sued Kanwaljit and the debtor's and Kanwaljit's daughter-in-law, Tina Sappal, to determine the estate's interest in various real properties and a gas station business; to impose a constructive, resulting, or equitable lien against certain of the properties; to avoid alleged fraudulent transfers of the properties; and to force a sale of the one-half interest in the properties the estate would acquire upon entry of a judgment avoiding and preserving for the estate the transfer of the debtor's alleged 50% interest in the properties. The court has previously entered a default judgment against Tina Sappal; the only issues remaining in the adversary proceeding are those involving Kanwaljit.

Kanwaljit (who is represented by counsel) and the trustee have entered into a settlement agreement pursuant to which Kanwaljit will have 90 days to pay the trustee \$390,000 (the "Settlement Payment"), through a refinance of one of the properties (the "Lafayette property") or otherwise. If she does not, then she will have until August 31, 2014 to sell the Lafayette property and pay the trustee the Settlement Payment. If she does not, then the trustee will market and sell the Lafayette property and retain \$390,000 of the net proceeds plus additional administrative expenses incurred in marketing and selling the property. (The trustee believes the Lafayette property has more than \$1,000,000 in equity.) Upon her receipt of the Settlement Payment, the trustee will release the lis pendens she has recorded against the real properties and dismiss the adversary proceeding with prejudice, each party to bear her own attorney's fees and costs. In addition, at that time, the estate's interest in all of the non-exempt scheduled and unscheduled property of the estate will be deemed assigned to Kanwaljit (except, perhaps, the Georgia Street property, as discussed below). Finally, if any part of the Settlement Payment remains after the payment, with interest, of all allowed claims against the estate of a priority higher than the claim of the debtor to surplus funds, that part will be returned to Kanwaljit.

The trustee's motion and supporting declaration contain an analysis of the settlement sufficient to permit the court to conclude that, when held up against the applicable factors, the compromise is fair and equitable. In making this determination, the court considers:

- (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988), citing A & C Properties, 784 F.2d

1377, 1381 (9th Cir. 1986). If the trustee is right about the value of the Lafayette property, the second factor - collectibility if the trustee prevails in the litigation against Kanwaljit - is neutral. The remaining three factors all weigh in favor of the compromise. The trustee believes the \$390,000 will likely be sufficient to pay all allowed claims, including administrative expenses, whereas litigation of the adversary proceeding would only increase administrative expenses, and the outcome would be uncertain. Kanwaljit heavily disputes the trustee's claims in the adversary proceeding, and it is clear that litigation would be highly fact-intensive, time-consuming, and difficult, as it would involve the conduct of the debtor and Kanwaljit as regards several different properties over an extended period of time. The court has no trouble concluding that the compromise best serves the interests of creditors.

The debtor fails to address any of the Woodson factors except the first - the probability of success in the litigation. In fact, on that point, the debtor's position is that the factual allegations the trustee has made in her complaint are false; thus, in the debtor's view, the trustee should not prevail in the litigation at all. This argument turns the most important factor - the paramount interests of creditors - on its head. Further, the argument does nothing more than invite the court to determine the factual issues raised by the complaint, which is not the court's role when it evaluates a proposed settlement. "Rather than an exhaustive investigation or a mini-trial on the merits, the bankruptcy court need only find that the settlement was negotiated in good faith and is reasonable, fair and equitable." Sirtos v. Ray (In re Sirtos), 2006 Bankr. LEXIS 4894 at \*32 (9th Cir. BAP 2006). The court's "proper role is 'to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness.'" Id., quoting In re Pacific Gas & Elec. Co., 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004). The debtor's factual allegations are far from sufficient for the court to conclude that the Settlement Payment, which, as indicated, will probably pay allowed claims in full, is below the lowest point in the range of reasonableness.

Second, the debtor objects to the element of the settlement that calls for the trustee to transfer all remaining property of the estate, including the Georgia Street property, where the debtor lives and in which he has claimed an exemption in the amount of \$110,000, to Kanwaljit. This appears to represent a misunderstanding of the settlement, which refers to a transfer to Kanwaljit of all remaining non-exempt assets of the estate. However, it appears the trustee is prepared to resolve this issue in a manner that should satisfy the debtor. In her reply to his opposition, the trustee states that prior to the hearing, she "anticipates filing a signed addendum to the Settlement modifying the Settlement such that the estate's interest in the Georgia Street Property will not be assigned to Kanwaljit." Reply, filed Jan. 15, 2014, at 2:15-17. Thus, "neither the estate's interest in the Georgia Street Property nor the Debtor's claim of exemption against the property will be affected by the Settlement." Id. at 2:17-18.

For the reasons stated, the motion will be granted. The court will hear the matter.

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1 Both the trustee and the debtor refer to Kanwaljit Kaur Sappal as Kanwaljit. Thus, the court will do so as well; no disrespect is intended. The court also notes that the debtor sometimes refers to Kanwaljit as his former spouse. It is not relevant for purposes of this decision whether she is his former spouse or they are still married.

21. 12-20571-D-7 PRITPAUL SAPPAL MOTION TO SUBSTITUTE ATTORNEY  
GAM-3 12-23-13 [131]
22. 13-35671-D-11 CARLYLE STATION LLC STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
12-13-13 [1]
23. 13-33674-D-7 CAROL BURGESS MOTION FOR RELIEF FROM  
AMC-1 AUTOMATIC STAY  
CENTRAL MORTGAGE COMPANY VS. 12-12-13 [30]

**Final ruling:**

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

24. 13-30483-D-7 GARY/SHARON SPARKS CONTINUED MOTION TO CONVERT  
TOG-2 CASE FROM CHAPTER 7 TO CHAPTER  
13  
10-28-13 [41]

**Tentative ruling:**

This is the debtors' motion to convert this chapter 7 case to chapter 13. The trustee originally opposed the motion, and the debtors filed a reply. The trustee has since filed a more limited supplemental response. For the following reasons, the court is inclined to deny the motion.

In an earlier tentative ruling, the court indicated it was not convinced, as the trustee had urged, that the debtors had, by bad faith conduct, forfeited their

right to convert the case, as discussed in Marrama v. Citizens Bank, 549 U.S. 365, 371 (2007). The court also found, however, that it appeared the debtors would be unable to satisfy the liquidation test in a chapter 13 case. The court in its tentative ruling made a detailed analysis of the debtors' assets and the exemption statutes, and concluded that, regardless of whether they claimed the exemptions provided by Cal. Code Civ. Proc. § 703.140(b) or those provided by Cal. Code Civ. Proc. §§ 704.010, et seq., they would be unable to meet the liquidation test. That is, given their income and expenses, they would be unable to propose a chapter 13 plan that would pay their general unsecured creditors at least as much as they would receive in a hypothetical chapter 7 case, as required by § 1325(a)(4) of the Bankruptcy Code. Specifically, the court said, depending on which set of exemptions the debtors chose, they would have non-exempt assets worth at least \$21,954; thus, they would need to pay that amount, plus trustee compensation, into the plan in order to satisfy the liquidation test. As the court demonstrated in its ruling, they would be financially unable to do this, even considering their sons' financial assistance the debtors had said they could obtain. The court continued the hearing, but added the debtors would need to file as an exhibit a proposed chapter 13 plan and show they would be able to satisfy the liquidation test.

Instead, in their reply, the debtors focused solely on the feasibility test, ignoring the liquidation test. Taking the offensive, they accused the trustee of trying to "liquidate all of their assets in a 'scorched earth' approach regardless of any set of exemptions the debtors employ." Debtors' Resp., filed Jan. 6, 2014, at 4-6. That is simply not true. The debtors, who filed this case in propria persona, but who now have the assistance of counsel, have filed an amended Schedule C and a proposed chapter 13 plan, which demonstrate quite clearly the debtors will be unable to propose a plan that meets the liquidation test. (If they extended the plan term from 36 months to 60 months, they would come closer to meeting it, but considering the chapter 7 administrative expenses discussed below, they would still probably not be able to retain all their assets.)

As predicted in the court's earlier tentative ruling, the amended Schedule C leaves a large amount of equity in the debtors' vehicles as non-exempt: a total of \$31,640. Thus, to meet the liquidation test, they would need to pay through their chapter 13 plan the greater of \$31,640 or 100% of general unsecured claims. (The debtors have no priority debt.) Filed unsecured claims at this time total \$21,036. In their proposed chapter 13 plan filed as an exhibit (DN 76, p. 17), the debtors propose to pay \$425 per month for 36 months, which would yield a total of \$15,300. Deducting trustee compensation (\$1,530) and the debtors' attorney's fees (\$2,800), there would be \$10,970 left for unsecured creditors. Thus, the plan would not meet the liquidation test and, on its face, would not be confirmable. (The plan provides that Class 7 creditors, estimated at \$20,096, would be paid 100%. A simple calculation, \$425 x 36 months, reveals that this is not possible.) On the other hand, if the debtors extended the plan term to 60 months, the extra 24 months would add another \$9,180 after trustee compensation, bringing the total available for unsecured creditors to \$20,150. This would still not meet the liquidation test, but it would bring the debtors closer; in fact, in the absence of the chapter 7 trustee's expenses, the plan would be close to satisfying the liquidation test.

This brings the court, then, to the chapter 7 trustee's expenses - both his compensation and his attorneys'. The trustee has filed a supplemental response to this motion, stating he does not oppose the motion, so long as all approved chapter 7 administrative expenses, including his and his attorney's compensation, are included in any chapter 13 plan the court may confirm.<sup>1</sup> The trustee states such expenses, as of January 13, 2014, are approximately \$14,480, which he says are due

largely to the debtors' conduct in the case thus far. Motions for approval of administrative expenses have not yet been made; thus, the amounts have not been fixed. However, if the debtors intend to pursue conversion to chapter 13, they will need to address this issue, as those administrative expenses would affect the liquidation analysis.

The court will hear the matter.

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1 The trustee is also concerned that the present motion not be construed as a motion to confirm a chapter 13 plan. As the case has not yet been converted, as no chapter 13 trustee has been appointed, and as the matter has not been pitched up as a motion to confirm a plan, this is not a concern.

25. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM  
WSH-7669 AUTOMATIC STAY  
KB HOMES COASTAL, INC. VS. 12-13-13 [1039]

**Final ruling:**

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

26. 12-34285-D-7 JASON MURRAY MOTION TO DISMISS ADVERSARY  
13-2373 RSG-1 PROCEEDING AND/OR MOTION FOR A  
MURRAY V. MERRILL MORE DEFINITE STATEMENT  
12-17-13 [6]

**Final ruling:**

The hearing on this motion is continued to February 5, 2014 at 10:00 a.m. No appearance is necessary on January 22, 2014.

27. 09-26096-D-7 TOP NOTCH LIMOUSINE AND MOTION FOR COMPENSATION FOR  
BHS-10 EXECUTIVE SERVICES BARRY H. SPITZER, TRUSTEE'S  
ATTORNEY(S), FEES: \$19,832.00,  
EXPENSES: \$323.92  
12-16-13 [195]

**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 and the moving party is to submit an appropriate order. No appearance is necessary.

28. 11-31798-D-12 ROBERT CARRILLO  
RDW-1  
PATELCO CREDIT UNION VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
12-23-13 [64]

**Final ruling:**

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

29. 13-29209-D-7 SUSAN SIX  
CYB-1

CONTINUED MOTION TO COMPEL  
ABANDONMENT  
12-10-13 [19]

30. 13-33420-D-7 CONG TRAN AND PHUONG  
DAT-1 HUYNH

CONTINUED MOTION TO COMPEL  
ABANDONMENT  
11-21-13 [13]

31. 13-35327-D-12 LAURA BRANDON

CONTINUED STATUS CONFERENCE RE:  
CHAPTER 12 VOLUNTARY PETITION  
12-3-13 [1]

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

**Final ruling:**

**The hearing on this motion is continued to February 5, 2014 at 10:00 a.m. No appearance is necessary on January 22, 2014.**

33. 06-22532-D-7 RIO MORALES CONTINUED MOTION FOR SUMMARY  
12-2587 DNL-1 JUDGMENT  
DIDRIKSEN V. LICHEN, INC. 9-16-13 [25]

**Final ruling:**

**The hearing on this motion is continued to February 5, 2014 at 10:00 a.m. No appearance is necessary on January 22, 2014.**

34. 13-35845-D-7 MARTIN GUPTILL ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
1-2-14 [11]

**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.**

35. 11-33153-D-7 KENNETH EDMONSON AND MOTION TO REDEEM PROPERTY (2004  
TBK-5 YESSENIA GONZALEZ NISSAN 350 Z)  
1-8-14 [127]

36. 11-33153-D-7 KENNETH EDMONSON AND MOTION TO REDEEM PROPERTY (2005  
TBK-6 YESSENIA GONZALEZ NISSAN ALTIMA)  
1-8-14 [133]
37. 13-28369-D-7 EDWIN GERBER CONTINUED MOTION FOR RELIEF  
FWP-1 FROM AUTOMATIC STAY AND/OR  
MONTICELLO BANKING COMPANY MOTION FOR ADEQUATE PROTECTION  
VS. 10-16-13 [31]
38. 13-27770-D-7 LYNN CARPENTER MOTION TO COMPEL ABANDONMENT  
RAH-1 1-8-14 [25]
39. 12-20571-D-7 PRITPAUL SAPPAL CONTINUED MOTION TO COMPEL  
ABANDONMENT  
12-3-13 [107]

40. 13-35375-D-7 TODD/DEBORAH PEARSON MOTION TO VACATE DISMISSAL OF  
CASE  
12-24-13 [15]  
**CASE DISMISSED 12/16/13**

41. 13-30483-D-7 GARY/SHARON SPARKS MOTION TO DISMISS CASE  
TOG-3 1-6-14 [78]

42. 13-30483-D-7 GARY/SHARON SPARKS CONTINUED MOTION FOR CONTEMPT  
SLF-3 11-15-13 [55]

**Tentative ruling:**

This is the trustee's motion for an order holding the debtors in contempt of court for refusing to obey a court order requiring them to turn over property of the estate; namely, three vehicles the court had determined to be non-exempt. The hearing was continued to allow the debtors to file opposition to the motion, which they have now done. For the following reasons, the motion will be granted in part; that is, the court will award a sanction against the debtors' attorney.

The debtors, then in propria persona, claimed three vehicles - a 2007 Ford F-250, a 2007 Ford Fusion, and a 1991 camp trailer, as exempt under Cal. Code Civ. Proc. § 703.140(b)(5), the "wild card." The total value of the exemptions exceeded the amount available under the wild card, and thus, the trustee's objection to the exemptions was sustained, leaving the vehicles, at that point in time, as non-exempt assets of the estate. The trustee also sought, and the court issued, an order requiring the debtors to turn over the vehicles within 10 days from service of the order. On October 22, 2013, the trustee served the order on the debtors and their new attorney, who had substituted into the case a week earlier. Six days after the date of service, the debtors' attorney filed a motion to convert the case to chapter 13, which he set for hearing on December 10, 2013. Before the motion could be heard, the trustee's auctioneer attempted to pick up the vehicles; in response, debtor Sharon Sparks informed him the debtors' attorney had advised the debtors not to turn over the vehicles. Thus, she told the auctioneer the debtors "were not

going to give up the cars." S. Sparks Decl., filed Jan. 8, 2014 ("Decl."), at 2:2-3. As a result of the debtors' failure and refusal to turn over the vehicles, the trustee has incurred attorney's fees and costs, according to his attorney's testimony, totaling \$2,556 through the date of the initial hearing on this motion. On account of the debtors' alleged contempt, the trustee requests the court impose a sanction in that amount against the debtors.

First, the court will address Mrs. Sparks' statement in her declaration in opposition to the motion that the debtors are "unsophisticated debtors and have little education" (Decl. at 2:4), and that they did not intend to defy the court's order. The court cannot accept the position that a debtor's lack of sophistication or education should protect him or her from a contempt sanction, as it would leave a court with no ability to enforce its orders against such individuals. The debtors have not suggested they were not aware of or did not read the order or that they did not understand it. The order could hardly have been clearer: it stated that "the Debtors shall turn over to the Trustee, within 10 calendar days from the date they are served with this order," the following: [describing the vehicles]. The court has no reason to believe the debtors did not know they were violating this order when they failed (Mr. Sparks) and refused (Mrs. Sparks) to allow the trustee's auctioneer to take the vehicles.

On the other hand, it is clear from the trustee's testimony, not refuted by the debtors or their attorney, that the debtors' attorney advised Mrs. Sparks not to turn over the vehicles. An unsophisticated debtor might well believe her attorney would not give her bad advice, and thus, the court finds Mrs. Sparks likely believed she could legitimately refuse to allow the auctioneer to take the vehicles. The debtors' attorney, on the other hand, should have known a party may not refuse to obey a court order simply because his or her attorney hopes and/or expects a motion to be granted in the future that might affect the party's duty to comply with the order if it has not by that time already been complied with. There has been no excuse offered for the debtors' attorney's decision to give the debtors this incorrect advice, nor has the attorney offered a reason he apparently took no intermediate steps, such as contacting the trustee's attorney to request a delay pending the hearing on the motion to convert or filing an adversary complaint and application for a temporary restraining order. Simply refusing to comply with a clear and valid court order was not an alternative. The court notes also that, when faced with the trustee's motion for an order holding his clients in contempt of court, the debtors' attorney failed to comply with the simple requirement to file written opposition in advance of the hearing. The attorney practices regularly in this court, and thus, is well aware of this requirement.

In short, the court finds that the debtors' attorney, without excuse, caused the debtors to violate the court's order, which, in turn, caused damage to the estate in the form of the attorney's fees incurred by the trustee in seeking to remedy the problem. The court will award sanctions in the trustee's favor against the attorney in the amount of \$2,556 plus the fees incurred as a result of the continuance necessitated by the attorney's failure to file a written response before the first hearing.

The court will hear the matter.

43. 12-33698-D-11 2 ANTIOCH, LLC  
DTK-2

CONTINUED MOTION TO DISMISS  
CASE  
11-4-13 [142]

44. 13-29030-D-7 WILLIAM/JANET CHENG

MOTION FOR STAY PENDING APPEAL  
1-9-14 [192]

**Final ruling:**

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion for a stay pending appeal of the court's order authorizing the trustee to employ a real estate broker. The trustee has filed opposition. For the following reasons, the motion will be denied.

The court notes, first, that the debtors have failed to assign a docket control number to this motion, as required by LBR 9014-1(c), a defect that has been present in all the motions the debtors have filed in this case, and as to which the court has previously cautioned them. In addition, the debtors filed this motion only 13 days prior to the hearing date they selected, rather than 14 days' (the minimum permitted by the local rules, see LBR 9014-1(f)(2)), without seeking an order shortening time. Further, they failed to serve the motion or the notice of hearing, instead, serving only the supporting declaration of Janet Cheng, which was filed and served only 8 days prior to the hearing, again, contrary to local rules. However, because it is clear the motion should be denied on its merits, in the interest of saving time for the parties and the court, the court has decided to consider the motion despite these procedural defects. The court again cautions the debtors to consult and comply with the local rules in the future. That the debtors are representing themselves does not excuse them from doing so.

On January 11, 2014, the court issued an order authorizing the trustee to employ a real estate broker to assist him in valuing, marketing, and possibly listing for sale certain real property of the estate. The order was issued following a hearing on the trustee's motion, to which the debtors had filed opposition. The court issued a tentative ruling in advance of the January 8, 2014 hearing, in which the court addressed the debtors' objections, including their objection that the court must provide an interpreter for them at the hearing. The court noted the debtors had cited no authority for the proposition that they have a right to a court-appointed interpreter, but added that they might provide their own interpreter who, if sworn to provide an accurate translation, would be permitted to interpret for them at the hearing. The court has made the debtors aware of its policy of issuing tentative rulings in connection with past motions in their case; thus, they were aware of the policy prior to the January 8, 2014 hearing. Yet they did not appear.

The debtors claim in this motion for a stay pending appeal that they did not

appear at the hearing because the court did not have an interpreter for them. They do not explain why they did not provide their own interpreter. Again, the court is not aware of any requirement that it provide an interpreter for the debtors. The court denies the debtors' request that the court provide an interpreter for them at the hearing on this motion for a stay pending appeal, but reiterates that in the future the debtors may provide their own interpreter.

The debtors also repeat the argument they made in opposition to the motion to employ the broker - that the trustee "granted dismissal" of the debtors' case at the meeting of creditors. The court addressed this argument in its tentative ruling on the trustee's motion to employ the broker, stating it was not within the trustee's purview to dismiss the case, and he did not do so. The argument need not be further addressed here. The court also rejects the debtors' argument that they did not have any legal or professional assistance to fill out their bankruptcy paperwork - it is not a requirement that a debtor who chooses to represent himself or herself in bankruptcy have legal or professional assistance in doing so. The court also rejects the debtors' argument that the bankruptcy is void because debtor William Cheng did not sign the petition - the court has previously addressed this argument in detail, and will not repeat itself here. Finally, the argument that § 707 of the Bankruptcy Code allows the court to dismiss the debtors' bankruptcy is rejected. The debtors have made no showing that dismissal under that section would be appropriate.

To conclude, the debtors have failed to demonstrate either (1) that they are likely to succeed on the merits of their appeal, and that there is a possibility of irreparable injury to them if the order is not stayed; or (2) that there are serious questions going to the merits and that a balance of hardships tips sharply in their favor, as required for issuance of a stay pending appeal. See Cadance Design Sys. v. Avant! Corp., 125 F.3d 824, 826 (9th Cir. 1997). Indeed, although the motion concludes with the statement that the debtors would suffer irreversible harm, it does not even allege what that harm would be. Even if the debtors could convince the court of the possibility of irreparable injury, the court would not find a likelihood of success on appeal or that there are serious questions going to the merits.

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

|     |                        |               |                              |
|-----|------------------------|---------------|------------------------------|
| 45. | 13-26559-D-7           | BRIAN MCGLONE | CONTINUED MOTION BY RICHARD  |
|     | 13-2330                | RK-1          | KWUN TO WITHDRAW AS ATTORNEY |
|     | MCGLONE V. IBERIA BANK |               | 12-24-13 [7]                 |

**Final ruling:**

This is the motion of Richard Kwun to withdraw as counsel for the plaintiff in this adversary proceeding. On January 11, 2014, attorney Steele Lanphier filed a Change in Designation of Counsel for Service, in which he designated himself as counsel for the plaintiff and stated that Mr. Kwun is no longer counsel of record. Further, on January 16, 2014, this adversary proceeding was dismissed for lack of prosecution. For both of these reasons, Mr. Kwun's motion to withdraw as counsel is moot.

The motion will be denied as moot by minute order. No appearance is necessary.

46. 11-41448-D-7 GHANSHYAM/JIGNASA PATEL  
13-2264  
NIMS V. PATEL ET AL

MOTION TO COMPEL RESPONSES AND  
FOR COMPENSATION FOR ERIC J.  
NIMS, CHAPTER 11 TRUSTEE, FEES:  
\$1,447.50, EXPENSES: \$0.0  
1-10-14 [20]

**Final ruling:**

The court finds that a hearing will not be helpful and is not necessary. This is the motion of the plaintiff, who is also the chapter 7 trustee in the underlying case in which this adversary proceeding is pending (the "trustee"), for an order compelling the defendants, who are the debtors in the underlying case (the "debtors"), to respond to certain discovery requests, and for an order that the debtors reimburse the trustee for his attorney's fees and costs incurred in connection with this motion. For the following reasons, the motion will be denied.

First, although the moving papers state the conclusion that "the Trustee's counsel made multiple and repeated efforts to confer with Defendants (and even their bankruptcy counsel, who is not their counsel of record in the instant case) to obtain responses" (Memo., filed Jan. 10, 2014, at 4:21-24), the evidence does not support the conclusion. The supporting declaration states that when timely responses were not received, the trustee's counsel sent the debtors a "demand letter" reminding them of their obligation to respond and requesting a response by a certain date. When the debtors failed to respond to that letter, the trustee's counsel contacted their attorney in the underlying bankruptcy case (the debtors are representing themselves in this adversary proceeding), who told her he was helping the debtors prepare their responses, which the trustee would have in a few days. When no responses were forthcoming, the trustee's counsel sent an e-mail to the debtors' attorney in the parent case, reminding him of his promise. The trustee then received a package from the debtors containing some documents and photos, but no responses. The trustee's counsel then sent a second "demand letter" to the debtors stating that if full and complete responses were not received by January 3, 2013, the trustee would file a motion to compel and for sanctions. The debtors did not respond to the letter, and did not serve responses to the discovery requests; this motion followed.

These letters and the e-mail fall far short of the efforts necessary to satisfy the good faith meet and confer requirements of FRCP 37(a)(1). The court draws the parties' attention to In re Sanchez, 2008 WL 4155115, 2008 Bankr. LEXIS 4239, \*2-5 (Bankr. E.D. Cal. 2008), for the standards to which the court will hold the parties in determining whether they have made a good faith attempt to meet and confer. (The parties were also referred to that case in the scheduling order in this adversary proceeding.) Because the moving party has failed to make a showing that he made a good faith effort to meet and confer, the motion will be denied.

Second, the motion was served on the debtors at an entirely different address from their address of record in this adversary proceeding, which is the address on the debtors' answer to the complaint, their counterclaim against the trustee, and their initial disclosures. The address at which the trustee served the debtors is their address as listed on their petition in the underlying case, and it remains their address of record in the underlying case. However, the debtors have not used that address anywhere in this adversary proceeding. (The "demand letters" were also sent to the address the debtors have not used in this adversary proceeding.)

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

47. 14-20196-D-11 LABOUR OF LOVE CHURCH OF ORDER TO SHOW CAUSE RE  
GOD IN CHRIST DISMISSAL  
1-15-14 [11]