UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 4, 2015 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

1.	10-43203-D-7 HCS-2	STEPHEN/DONNA LISTEK	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY 12-11-14 [139]
2.	14-29905-D-11	RAVINDER GILL	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 10-2-14 [1]

3. 14-29015-D-7 BARRY GERMO — MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
DBJ-1 — 12-17-14 [11]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for exemption from financial management course is supported by the record. As such the court will grant the motion for exemption from financial management course. Moving party is to submit an appropriate order. No appearance is necessary.

4. 14-29621-D-7 KASANDRA FINLEY — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
14-2337
LEE V. FINLEY — 1-9-15 [10]

5. 14-28224-D-7 DONALD/JAMI PEREA — MOTION TO AVOID LIEN OF CITIBANK, SOUTH DAKOTA, N.A.
DPR-4 — 12-18-14 [53]

Final ruling:

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

6. 14-22526-D-7 DAVID JONES — MOTION TO DISMISS COUNTERCLAIM OF DEFENDANT PAMELA ANN JONES
14-2161 BRK-3
MEREDITH V. JONES ET AL — 12-18-14 [39]

Tentative ruling:

This is the motion of plaintiff John Meredith (the "plaintiff") to dismiss the counterclaim of defendant Pamela Ann Jones pursuant to Fed. R. Civ. P. 12(b)(6), made applicable herein by Fed. R. Bankr. P. 7012(b) ("Rule 12(b)(6)"). Pamela Ann Jones has filed opposition, and the plaintiff has filed a reply. For the following reasons, the motion will be granted.

There are two defendants in this adversary proceeding – David Clark Jones and Pamela Ann Jones. David is the debtor in the underlying chapter 7 case in which this adversary proceeding is pending; Pamela is his spouse.[1] By his amended complaint filed November 6, 2014, the plaintiff seeks a determination that a debt

allegedly owed to him by the defendants is, as to David, nondischargeable pursuant to § 523(a)(4) and (a)(6) and would be, as to Pamela, nondischargeable under § 523 in a case concerning Pamela commenced on the date of filing of David's case. The plaintiff also seeks a determination that David is not entitled to a discharge pursuant to several subdivisions of § 727(a) and a finding that the court would not grant Pamela a discharge in a chapter 7 case concerning Pamela commenced on the date of filing of David's case. As to Pamela, the amended complaint is based on § 524(a)(3) and (b)(2)(A) of the Bankruptcy Code.

On November 25, 2014, Pamela filed an answer to the amended complaint and a counterclaim against the plaintiff. It is that counterclaim the plaintiff seeks to dismiss by way of this motion. The plaintiff contends (1) Pamela lacks standing to assert the claims in her counterclaim because those claims belong to the bankruptcy estate in David's pending case or the bankruptcy estate in In re Telecomm Communications, Inc., Case No. 14-21431; and (2) Pamela is not the real party in interest with respect to those claims.[2] In opposition to the motion, Pamela describes her counterclaim as a "cause of action for unjust enrichment which would give a right to a recoupment under the current law." Pamela's Opp. filed Jan. 20, 2015 ("Opp."), at 2:22-23. She also contends "[r]ecoupment for unjust enrichment is not a part of the bankruptcy estate." Id. at 3:1. Although Pamela cites several cases, none of them supports her contention that her claims are not property of the estate. The court concludes that the counterclaim, as presently stated, sets forth causes of action for affirmative relief that are assets of David's bankruptcy estate and are claims Pamela has no standing to assert.

Virtually all of the conduct of the plaintiff alleged by Pamela in her counterclaim was directed toward David: she alleges that a purchase contract was entered into between the plaintiff and his now deceased wife, on the one hand, and David, on the other hand, for the purchase of stock in Telecomm Communications, Inc. ("TEI"); that under the agreement, management and control of TEI was to be turned over to David; that the plaintiff made misrepresentations to David and misled David into the agreement; that by his misrepresentations, the plaintiff attempted to defraud the marital community of David and Pamela; and that the plaintiff breached his fiduciary duty as an officer of TEI to the detriment of David as a shareholder, which resulted in TEI being forced into bankruptcy and David's investment in TEI being rendered worthless. This, Pamela claims, harmed the community and her.

Throughout the counterclaim, Pamela alleges that the plaintiff's conduct harmed TEI, David, the community, and Pamela; however, except in conclusory fashion, Pamela has failed to make any factual distinction between herself and the marital community of David and Pamela. In several paragraphs, Pamela alleges the plaintiff's conduct harmed "the community and PJones"; she alleges, in similar conclusory fashion, "PJones was financial[ly] harmed."[3] However, except for those conclusory attempts to distinguish her own interests from those of the marital community, there are no allegations of any harm to Pamela separate and apart from the harm to the marital community. Only once does Pamela make specific reference to her separate property interests: "Further, [the plaintiff] has been actively attempting to sabotage TEI and DJones for years and also is attempting to further harm DJones by creating an environment to attempt to steal the separate property of DJones[']s spouse, Defendant and Counter-Claimant Pamela Jones." Answer and Counterclaim, filed Nov. 25, 2014 ("Counterclaim"), at 8:14-17. That allegation is far too conclusory to state a claim to relief for damages to Pamela separate and apart from the marital community.

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, 556 U.S. 662, 678 (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." Iqbal, 556 U.S. at 678, citing Twombly, 550 U.S. at 555.

In this case, the allegation that the plaintiff is "creating an environment to attempt to steal [Pamela's] separate property" is too conclusory to support a claim that the plaintiff has harmed any separate property interest of Pamela. The references to harm to "the community and PJones" are similarly too conclusory. Finally, the more fact-specific allegations support only the claim of harm to the marital community.[4] The court concludes that Pamela's counterclaim does not contain sufficient factual allegations, accepted as true, to state a plausible claim that her interests, separate and apart from those of the marital community, were harmed.[5]

Assuming without deciding that the factual allegations of the counterclaim are sufficient to state a claim or claims for relief for harm to the marital community of David and Pamela, those claims are property of the bankruptcy estate in the debtor's chapter 7 case. A debtor's causes of action become property of his or her bankruptcy estate. Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001). A bankruptcy estate includes all interests of the debtor and his or her spouse in community property as of the commencement of the case that is under the sole, equal, or joint management and control of the debtor or liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable. § 541(a)(2); see also Dumas v. Mantle (In re Mantle), 153 F.3d 1082, 1085 (9th Cir. 1998) ("For purposes of § 541(a)(2), all community property not yet divided by a state court at the time of the bankruptcy filing is property of the bankruptcy estate."). Because the claims asserted by Pamela in her counterclaim are property of the bankruptcy estate in David's pending case, Pamela has no standing to pursue them and is not the real party in interest. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004).

Pamela contends the claims she purports to state in her counterclaim are merely claims for recoupment, which are defensive in nature, and therefore, not property of the estate. With one exception, the cases she cites do not involve a debtor in bankruptcy (or his spouse) attempting to assert a right of recoupment against a creditor; thus, they are not on point. The exception is In re Smith, 737 F.2d 1549 (11th Cir. 1984), in which a debtor in a chapter 13 case sued her mortgage lender for rescission and damages under the Truth in Lending Act. When the lender counterclaimed for the amount of the debt, the debtor filed a counterclaim to the counterclaim, in which she claimed a right to recoupment for damages for violations of TILA. The court held that the debtor's underlying claims for damages for violations of TILA were barred by the statute of limitations (737 F.2d at 1552), and the debtor could not avoid that result by referring to the same claims as claims for "recoupment" in response to the lender's claims. Id. at 1554. The issue whether the debtor's claims against the lender were property of the bankruptcy estate did not come up; thus, the case does not support Pamela's position here.

Pamela cites In re Gross Plumbing & Heating Co., 146 B.R. 914 (Bankr. W.D.N.Y. 1992) as "discuss[ing] concept of recoupment as an adjustment of amounts owed and

that amounts subject to recoupment are not property of the estate." Opp. at 3:19-21 (emphasis in original). Pamela has not provided a pin cite for this proposition, but in any event, the discussion she is apparently referring to concerns the debtor's claim against a creditor as coming into the bankruptcy estate subject to the creditor's defense of recoupment. See 146 B.R. at 917-18. The case says nothing about a debtor's right of recoupment, where asserted as an affirmative claim against the creditor, not being property of the estate.

Pamela also cites Chi. Title Ins. Co. v. Seko Inv., Inc. (In re Seko Inv., Inc.), 156 F.3d 1005, 1009 (9th Cir. 1998), in which the Ninth Circuit held that an alleged debtor cannot defeat an involuntary petition by alleging that a petitioning creditor's claim is in bona fide dispute because the amount of a counterclaim by the debtor against the creditor exceeds the amount of the creditor's claim against the debtor. 156 F.3d at 1008. In the portion of the decision quoted by Pamela, the court suggested that an alleged debtor's valid defense of recoupment, might knock out a petitioning creditor on the basis of a bona fide dispute, since the debtor asserting recoupment challenges the validity of the creditor's claim, rather than simply asserting the creditor owes the debtor more money in the aggregate. Id. at 1009. Again, the case does not help Pamela because it does not concern the question whether a debtor's claims to affirmative relief that existed pre-petition, as here, are or are not property of the estate.

Finally, Pamela cites Newbery Corp. v. Fireman's Fund Ins. Co., 95 F.3d 1392 (9th Cir. 1996), but only for the general proposition that recoupment is an equitable doctrine which is based on the premise that "the defendant should be entitled to show that because of matters arising out of the transaction sued on, he or she is not liable in full for the plaintiff's claim." 95 F.3d at 1401. In that case, recoupment was asserted by the creditor, not the debtor in bankruptcy; thus, whether an affirmative claim for recoupment is property of the estate was not in issue. To conclude, Pamela has cited no authority for the proposition that affirmative claims held by the marital community of a chapter 7 debtor and his spouse against a creditor, arising pre-petition, even if alleged to be based on a right of recoupment, are not property of the bankruptcy estate.

The court notes that the general allegations and seven claims for relief in Pamela's counterclaim do not contain the word "recoupment"; instead, the counterclaim as stated asserts affirmative claims for relief that, as discussed above, appear to belong to the marital community of David and Pamela. In the prayer to the answer and counterclaim, Pamela requests (1) that the plaintiff take nothing by way of his complaint; and (2) judgment for Pamela comprised of an award of compensatory damages in an amount according to proof, plus punitive damages, declaratory relief, attorney's fees, and costs. There is no indication that Pamela intends her counterclaim to be used solely to reduce the amount of the plaintiff's claims against her.

For the reasons discussed above, the claims asserted by Pamela in her counterclaim are property of the bankruptcy estate in David's case, and Pamela has no standing to assert them. The court does not mean to suggest that Pamela might not assert recoupment as an affirmative defense; she has, in fact, asserted affirmative defenses based on unjust enrichment and breach of fiduciary, fraud, and conversion by the plaintiff. If Pamela wishes to amend her answer to modify or add to her affirmative defenses, the court will grant her leave to do so, pursuant to Fed. R. Civ. P. 15(a)(2), incorporated herein by Fed. R. Bankr. P. 7015. However, the court will not grant Pamela leave to amend the counterclaim. Amendments to pleadings are to be liberally allowed in view of the policy favoring determination

of disputes on their merits. See Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a)(2); Magno v. Rigsby (In re Magno), 216 B.R. 34, 38 (9th Cir. BAP 1997) (citation omitted). However, where an amendment would be futile, leave to amend will be denied. Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1051 (9th Cir. 2008). As the claims Pamela purports to state in her counterclaim are claims that belong to the bankruptcy estate in David's case, the court finds that amendment of the counterclaim would be futile.

The court will hear the matter.

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1 The court will use the defendants' first names to distinguish them; no disrespect is intended thereby.

2 The plaintiff makes two other arguments, to which Pamela has responded; however, because the court will grant the motion on the plaintiff's first two points, the court need not reach the other two.

3 The counterclaim uses "DJones" and "PJones" to distinguish David and Pamela.

4 "PJones has been damaged by the total loss of any investment DJones made in TEI and has been forced DJones bankruptcy [sic] harming the community and PJones." Counterclaim, at 11:5-6. "PJones requests that the community be made whole for the funds and property wrongful[ly] taken from her." Id. at 12:9-10.

5 Even if the counterclaim were sufficient to state a claim to relief for Pamela personally, as distinct from the marital community, the motion would be granted because this court would have no jurisdiction over those claims. Pamela is not a bankruptcy debtor. Her separate property claims, if any, do not arise under the Bankruptcy Code, do not arise in a case under the Bankruptcy Code, and are not 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).

7.	12-36631-D-7 GMR-5	CHENITA BRADLEY	MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, CHAPTER 7 TRUSTEE 1-3-15 [74]

Final ruling:

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

8. 14-31035-D-7 KAY HOWARD
KAZ-1
U.S. BANK TRUST, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-26-14 [32]

Final ruling:

This matter is resolved without oral argument. This is U.S. Bank Trust, 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.

9. 12-39040-D-7 JUDITH FOSTER
GMR-4

MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)
1-2-15 [52]

Final ruling:

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

10. 12-39040-D-7 JUDITH FOSTER
HCS-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
1-7-15 [58]

Final ruling:

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

11. 12-26444-D-7 MARY JUIP
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT
1-7-15 [156]

Final ruling:

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

12. 14-30044-D-7 RACHELLE BENFORD — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-8-15 [37]

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.

13. 14-30044-D-7 RACHELLE BENFORD — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1
U.S. BANK, N.A. VS.
12-22-14 [29]

14. 14-30246-D-7 GREGORY VINCENT AND DAWN VINCENT- TARANTINO — MOTION TO AVOID LIEN OF LUCERO ROOFING, INC.
GW-1
1-5-15 [15]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Lucero Roofing, Inc. (the "Creditor"). The motion will be denied because the moving parties failed to serve the Creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Creditor (1) at a post office box address with no attention line; (2) through an individual named Eric Lucero; and (3) through the attorneys who obtained its abstract of judgment. The first method was insufficient because a corporation must be served to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line. The second method was insufficient because service must be made to the attention of an officer, managing or general agent, or agent for service of process, whereas there is no indication Eric Lucero occupies any of those roles for the Creditor.[1] The third method was insufficient because there is no evidence the attorneys who obtained the Creditor's abstract of judgment are authorized to accept service of process on its behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

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

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1 Because of his name, inference suggests Mr. Lucero is an officer or managing or general agent of the Creditor. However, speculation is not sufficient. "Because a debtor may avoid the judicial lien creditor's interest in the property without its consent, strict compliance with procedural matters when presenting a motion to avoid the creditor's lien is required. 'The litigant attempting to effect service is responsible for proper service and bears the burden of proof.'" Frates v. Wells Fargo, N.A. (In re Frates), 507 B.R. 298, 302 (9th Cir. BAP 2014), quoting In re Villar, 317 B.R. 88, 94 (9th Cir. BAP 2004).

15.	14-29547-D-7 JB-2	FRANCIS/ISABEL FAHRNER	MOTION TO EMPLOY GABRIELSON & COMPANY AS ACCOUNTANT(S) 1-7-15 [58]
16.	09-29162-D-11 DB-28	SK FOODS, L.P.	CONTINUED MOTION TO DISGORGE FEES 6-24-14 [4885]
17.	09-29162-D-11 SH-286	SK FOODS, L.P.	CONTINUED OBJECTION TO CLAIM OF FARELLA BRAUN + MARTEL, CLAIM NUMBER 380 7-22-14 [5025]
18.	13-34967-D-7 TOG-13	ERNESTO/MARIA ESTRADA	CONTINUED MOTION TO COMPEL ABANDONMENT 12-11-14 [104]

Final ruling:

Motion withdrawn by moving party on January 22, 2015. Matter removed from calendar.

19. 14-30870-D-11 SKANDIA FAMILY CENTER, INC.
CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
11-1-14 [1]

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

20. 14-30870-D-11 ET-1 SKANDIA FAMILY CENTER, INC.
MOTION TO EMPLOY MATTHEW R. EASON AS ATTORNEY
1-7-15 [69]

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

21. 14-30870-D-11 PHL-1 SKANDIA FAMILY CENTER, INC.
RABOBANK, N.A. VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
1-6-15 [44]

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

22. 14-29471-D-7 NICHOLAS IORG
MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
12-19-14 [40]

23. 14-29472-D-7 HAL YINGLING — OBJECTION TO CLAIM OF ATLAS ACQUISITIONS, LLC, CLAIM NUMBER 3
JSO-1 — 12-31-14 [13]

Final ruling:

This is the debtor's objection to the claim of Atlas Acquisitions LLC (the "Claimant"), Claim No. 3 on the court's claims register. The objection will be overruled for the following reasons. First, the moving party gave only 35 days' notice of the hearing rather than 44 days', as required by LBR 3007-1(b)(1) for notices of this type, which purport to require the filing of written opposition 14 days before the hearing date. Second, the moving party failed to serve the Claimant at the complete address designated in its request for special notice filed in this case, DN 9.

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

The trustee in this case has issued a notice to file claims due to the possible recovery of assets. However, based on the debtor's schedules, there is no reason to suppose the recovery, if any, will be sufficient to pay all creditors and return a surplus to the debtor. The debtor scheduled the value of all of his assets (none of which was listed as having an unknown value) at $195,175, and he claimed as exempt value in those assets totaling $79,846, leaving $115,329 available to pay claims in the unlikely event the trustee is able to collect and liquidate 100% of the non-exempt assets. By contrast, the debtor scheduled priority claims totaling $74,657 and general unsecured claims totaling $65,886 (on an amended Schedule F). Assuming those figures are correct, the non-exempt assets would fall short by $25,214 of satisfying claims in full. The IRS has filed a proof of claim listing its priority claim at significantly lower than the amount scheduled by the debtor. However, the total amount claimed in the proof of claim, including priority and general unsecured, is $154,497, all of which would have to be paid in full before any surplus would be returned to the debtor. Given these numbers, it seems highly unlikely there will be a surplus available for the debtor in this case.

For that reason, as well as the service and notice defects noted above, the objection will be overruled by minute order. No appearance is necessary.

24. 14-31877-D-7 MARIA GUARNERA
RCO-1
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
12-19-14 [20]

Final ruling:

This case was dismissed on December 23, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

25. 14-28581-D-7 ROBERT/MARGARET WEBER
CJY-6

MOTION TO AVOID LIEN OF NORTHERN CALIFORNIA COLLECTION SERVICE, INC.
1-7-15 [55]

Final ruling:

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

26. 11-36184-D-7 RAJ KAMAL CORPORATION
GAG-1

MOTION FOR COMPENSATION FOR GONZALES & SISTO, LLP, ACCOUNTANT(S)
12-30-14 [316]

Final ruling:

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

27. 14-28694-D-11 RICHARD/JENNIFER GARCIA

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
8-28-14 [1]

Final ruling:

The status conference is continued to March 4, 2015 at 1:00 p.m. to be heard with the hearing on approval of disclosure statement. No appearance is necessary on February 4, 2015.

28. 14-25998-D-7 SSA-3 — HENRY TRAN — MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY 1-7-15 [30]

Final ruling:

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

29. 12-40315-D-7 — OLUSEGUN/YVONNE LERAMO — CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES 12-1-14 [286]

Final ruling:

This is the motion of former counsel for the debtors in this case while they were debtors-in-possession ("Counsel") for an administrative expense in the amount of $4,130.17, which is the amount by which Counsel's requested compensation exceeds the remaining amount of his pre-petition retainer. Counsel's application for approval of attorney's fees and costs is also on this calendar. To the extent an award of compensation exceeds the amount of a professional's remaining retainer, the balance has administrative priority in the case, and a separate motion for an administrative expense is unnecessary. For this reason, this motion will be denied as unnecessary. No appearance is necessary.

30. 12-40315-D-7 TGF-3 — OLUSEGUN/YVONNE LERAMO — CONTINUED MOTION FOR COMPENSATION FOR VINCENT A. GORSKI, DEBTORS' ATTORNEY 11-26-14 [279]

Tentative ruling:

This is the application of Vincent A. Gorski ("Counsel") for a first and final allowance of compensation as counsel for the debtors in this case during the time the case was a chapter 11 case and the debtors were debtors-in-possession.[1] Counsel requests approval of $22,417.50 in fees and $994.17 in costs, for a total of $23,411.67. The United States Trustee (the "UST") has filed opposition. For the following reasons, the application will be granted in part.

First, in its ruling on Counsel's application to be employed, the court declined Counsel's request to approve his employment effective as of the petition date, November 20, 2012, noting that Counsel had failed to make the necessary showing for nunc pro tunc employment under Okamoto v. THC Fin. Corp. (In re THC Fin. Corp.) , 837 F.2d 389, 392 (9th Cir. 1988). With the present application, Counsel has not attempted to make such a showing; thus, the court will disallow fees for services performed during the period between the petition date, November 20, 2012, and the date Counsel filed his employment application, January 9, 2013, a total of $6,150.[2]

Turning to the services performed on and after January 9, 2013, the court will disallow $810 for the services performed by Anna Wells, 3.6 hours, on the ground she is not identified as an attorney, paralegal, or other, and her qualifications to bill at $225 per hour are not stated.[3] Deducting those two amounts, $6,150 and $810 from the total, $22,417.50, leaves $15,457.50 to consider.

The UST's opposition is well taken and well stated, and the court adopts it herein in full. The court has already determined to disallow, as incurred during the period before Counsel's employment application was filed, the charges the UST cites for reviewing notices conveying information Counsel was already aware of, such as the Notice of Incomplete Filing, the Notice of Requirement to Complete Course in Financial Management, and the trustee's report of the meeting of creditors, which advised only that the meeting, which Counsel had attended, had been concluded. However, the fact that Counsel billed for reviewing those notices is significant in that it represents a pattern that Counsel carried forward into the period after his employment application was filed. Thus, for the period beginning January 9, 2013, as suggested by the UST, the court will disallow all charges for reviewing e-filing confirmations and notices of filing (36 charges @ 0.1 hour each @ $300 per hour, a total of $1,080), reviewing special notice requests (2, a total of $60), and calendaring hearing dates and the date of an operating report workshop (4, a total of $120). Those activities were either secretarial in nature or unnecessary.[4] When an attorney bills as aggressively as Counsel has in this case, Counsel loses the benefit of doubt on any billing entry that is questionable or a close call.

Counsel also billed for a large number of services he described as "Communication Received re:" or "Communication Sent re:" or "Client Submission Received re:". The descriptive matter following these entries is in many instances confusing, and in several instances reveals services for which, clearly, no charge should have been made. These include entries described as "Incomplete Transmission," "Duplicate," "No Caller ID," "Message Return," "Please Call," and "[e-mail address] joined your shared Dropbox." The court will disallow those so identified, 7 @ 0.1, or $210. There are also several entries in the "Communication Received," "Communication Sent," and "Client Submission Received" categories where, although the word "duplicate" is not used, it appears almost certain the communication, whatever it may have been – whether an e-mail, letter, or telephone conference (no distinction is made) – was billed more than once. Thus, the court will disallow the charges for duplicative entries on February 8 (0.5 hrs., $150), February 25 (0.2 hrs., $60), and February 27 (0.5 hrs., $150), as well as charges where it is clear the recipient of a communication merely forwarded it on to someone else, probably by way of a simple keystroke, but billed separately for receiving and sending, on February 28, March 2, March 7, April 19, May 7, May 9 (two), May 10, May 14, May 22, May 23 (three), May 24, May 30 (five), June 3 (two), June 4, July 17, July 25 (three), and August 15 (five), a total of 3.7 hrs., $1,110.[5] Next, there are seven entries on July 10, at 0.1 hr. each, all labeled "Email" or "Email Correspondence" re "Deadline Respond." It appears these were nothing more than reminders about the deadline for the debtors' response to the UST's motion to dismiss or convert the case. The charges, a total of $210, will be disallowed as unnecessary, duplicative, and secretarial in nature.[6]

It will appear to the reader that the court is taking a "nickel and dime" approach to Counsel's fee application, which may seem unfair. (This line-by-line parsing of the time entries is also something the court should not have to do.) However, Counsel has made it necessary in this case by his nickel and dime approach to his billing practices. As indicated above, there are many instances in which it

is clear Counsel billed separately for receiving and transmitting some piece of correspondence, often without indicating he even reviewed the document. In other instances, Counsel flat-out billed separately for obviously duplicative receipts and transmissions. These charges were unnecessary and unreasonable, and represented poor billing judgment.

Next, Counsel billed several hours for services made necessary only by his own earlier failures to comply with a court order. The court issued a scheduling order in this case at the time the case was commenced, which required the debtors to file a status report and serve it, together with the scheduling order, on the UST and other designated parties. Counsel failed to serve the scheduling order and to file a status report prior to the initial status conference, and failed to meet the court's deadline for filing and serving a notice of continued status conference, instead filing and serving that notice less than a week prior to the continued date. Counsel filed a second notice of continued status conference by the court's second deadline, but served only that notice, and in fact never served the status report at all. The two continued status conferences, on January 9, 2013 and February 13, 2013, would have been unnecessary had Counsel complied with the scheduling order in the first instance. Thus, the court will disallow Counsel's charges on January 9 for preparing for and traveling to and from the status conference (2.8 hrs.) and on January 11 for drafting, filing, and reviewing a notice of continued hearing (0.6 hrs.), a total of $1,020. (The court will allow the charges on February 13 for preparing for, traveling to and from and attending the status conference, since Counsel would have had to attend one status conference in any event, and the charges for the initial hearing have been disallowed as incurred prior to the date of Counsel's employment application.)

Similarly, Counsel billed for 2 hours of Anna Wells' time in drafting and updating an application to employ an accountant that was never filed.[7] The debtors' use of an accountant is significant because Counsel's billing statements are replete with entries for receiving and forwarding materials for the debtors' monthly operating reports and for reviewing and filing the reports. In fact, except for preparing an application to extend time to file schedules, attending the meeting of creditors and the UST's initial debtor interview, preparing his own and the accountant's employment applications, preparing the status report and preparing for and attending the continued status conferences, reviewing and opposing the motion to dismiss or convert, and receiving and sending correspondence that in many instances was unnecessary, duplicative, or secretarial in nature, virtually everything Counsel did in the case involved the monthly operating reports. As indicated, Counsel billed for receiving and forwarding materials used in preparing the reports, such as bank statements, receipts and disbursements ledgers, and spreadsheets, and for reviewing and filing the reports.[8] Yet there is no indication Counsel did anything other than take in information for the reports from the debtors and forward it to the accountant and vice versa. In other words, there is no evidence Counsel's services regarding the monthly operating reports were necessary or reasonable. Accordingly, his charges for those services, $4,560 for 15.2 hours, will be disallowed.[9]

To conclude, the application will be granted in part, and the court will allow Counsel fees in the amount of $6,727.50 and costs of $994.17, for a total of $7,721.67, representing the total amount sought, $23,711.67, minus the amounts discussed above that will be disallowed. As to the balance of the amount requested, the application will be denied. Counsel may deduct $7,721.67 from the balance of his retainer remaining in his client trust account and apply it to the fees and costs approved hereby. Because of the court's uncertainty about the status of the

case, the court will look to the trustee or the U.S. Trustee as to where Counsel should direct the then-remaining balance of the retainer.

Finally, Counsel drew down his pre-petition retainer of $25,000 by $5,718.50 on account of pre-petition services. He has not applied for approval of the $5,718.50 paid for those services, and has not provided copies of his time entries for the pre-petition period. Based on the aggressive billing discussed in this tentative, the court cannot conclude that the $5,718.50 amount represents the reasonable value of Counsel's pre-petition services. Accordingly, for the purpose of the court making a determination of the reasonable value of those services pursuant to § 329(b) of the Bankruptcy Code, Counsel shall file, serve, and notice for hearing an application for approval of the fees and costs for those services within 30 days from entry of an order on this motion. The application shall include an itemized statement of the fees and costs, as required in any application for compensation.

The court will hear this matter.

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1 Although the application gives the time period covered as November 20, 2012 (the petition date) through July 12, 2014, the time records in support of the application run only through August 20, 2013. The services performed after a chapter 11 trustee was appointed amount to 2.7 hours and $810. A portion of that compensation will be allowed and, as discussed below, a portion will be disallowed.

2 There is no request for any costs incurred during that period.

3 This was an unnecessarily difficult calculation to make as the summary sheet, Exhibit B, indicates her time was billed at $225 per hour, but the individual time entries under her name show her time as billed at $300 per hour. It was only after pulling her time out and calculating it at both hourly rates, then deducting the difference from the total billed by both Ms. Wells and Mr. Gorski that the court was able to determine that the $22,417.50 figure for both includes Ms. Wells' time at $225 per hour, not $300.

4 The court may allow compensation for actual, necessary services. § 330(a)(1)(A). The court may not allow compensation for services that were secretarial or clerical in nature. Sousa v. Miguel, 32 F.3d 1370, 1374 (9th Cir. 1994).

5 Most of these charges were for 0.1 hours, but some were for more. The court has made its calculations using the actual amounts charged.

6 As the UST points out, many of the entries described in this paragraph include initials, often a string of initials, apparently identifying the persons to or from whom the correspondence was conveyed. For five of those sets of initials, the moving papers do not identify any individuals with those initials, and the court cannot determine who was involved.

7 Ms. Wells' charges for these services have already been disallowed when the court disallowed, above, all of her charges for failure to make a showing of her qualifications to bill at $225 per hour.

8 In a particularly gross example, Counsel billed 1.5 hours, $450, for reviewing and filing the first monthly operating report, which consisted of five pages – two pages of substantive information and three pages reiterating the same information in

different forms, and which took the court less than five minutes to review and understand.

He also billed 1.5 hours, $450, for the following entry: "Calendar Reminder: Leramo MOR Workshop With Arne [the accountant] @ Mon Apr 8, 2013 11:30am - 1pm." Presumably, he attended the workshop, although that is not clear from this entry. But even if he did, there is no indication it was necessary or reasonable for him to do so, or that the estate benefitted in any way from his attending it.

9 Many of the charges already disallowed for another reason discussed above appear to have been related to the monthly operating reports or underlying materials. The court has been careful not to disallow the same charges twice.

31.	14-32519-D-7 NCK-1 LY PHAN VS.	ANTONIO ARROYO	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-20-15 [23]

CASE DISMISSED 1/20/15

32.	14-30523-D-7 RJM-1	RANDY MARSTON	MOTION TO AVOID TRANSFER OF PROPERTY AND/OR MOTION TO PERMIT TURNOVER OF GARNISHED FUNDS 1-20-15 [21]

Final ruling:

This is the debtor's motion to compel the Los Angeles County Sheriff to turn over or surrender to the debtor funds that were garnished from the debtor's wages prior to the filing of this case. The matter is a contested matter. Collect Access LLC v. Hernandez (In re Hernandez), 483 B.R. 713, 726 (9th Cir. BAP 2012). Thus, the moving party was required by Fed. R. Bankr. P. 9014(b) to serve the creditor, Cach, LLC, in compliance with Fed. R. Bankr. P. 7004(b)(3). The moving party served Cach, LLC (1) at a street address, with no attention line; and (2) through its attorneys in the state court action. The first method was insufficient because a corporation, partnership, or other unincorporated association must be served to the attention of an officer, managing or general partner, or agent for service of process, whereas here, there was no attention line. The second method was insufficient because there is no evidence the attorneys who represented Cach, LLC in the state court action are authorized to accept service of process on its behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

The court will continue the hearing to February 18, 2015 at 10:00 a.m., the moving party to file and serve a notice of continued hearing no later than February 4, 2015. The notice of continued hearing shall comply with LBR 9014-1(f)(2) (no written opposition required). The moving party shall also serve the motion and supporting declaration and exhibits on Cach, LLC in compliance with Fed. R. Bankr. P. 7004(b)(3), and shall serve the notice of continued hearing on all others who were served with the original notice. The moving party shall file proofs of service evidencing such service no later than February 9, 2015.

The hearing will be continued by minute order. No appearance is necessary on February 4, 2015.

33. 14-31228-D-7 KAREN WOOD
DJD-1
SETERUS, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-15 [21]

Final ruling:

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

34. 10-42050-D-7 VINCENT/MALANIE SINGH
CDH-14

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CLASS E AND CLASS F
1-14-15 [490]

35. 10-42050-D-7 VINCENT/MALANIE SINGH
GJH-4

MOTION TO EMPLOY GERARD A. MCHALE, JR. AS EXPERT WITNESS
12-30-14 [482]

Tentative ruling:

This is the application of the trustee in this case, who is also the plaintiff in a large number of pending adversary proceedings, to employ Gerard A. McHale, Jr. as a consultant and expert witness in exchange for a $15,000 fixed fee for preparation of his report as an expert witness and on an hourly basis thereafter. A group of creditors, who are defendants in some of the adversary proceedings (the "Creditors"), have filed a collective opposition, and the trustee has filed a reply. For the following reasons, the application will be granted.

This appears to the court to be, as the trustee suggests in his reply, a garden-variety application to employ a professional person. The court will therefore consider the various issues raised by the Creditors, together with the trustee's reply. First, the Creditors initially objected that the application was made too late because the trustee had failed to designate Mr. McHale as an expert witness by the deadline to disclose experts in the adversary proceedings. The Creditors later filed a supplement to their opposition, in which they acknowledged that their counsel had received the trustee's disclosure of expert witnesses the afternoon of January 5, 2015. The trustee's disclosure of expert witnesses was filed in the adversary proceedings on January 2, 2015, which was the deadline fixed by the court's scheduling order. The trustee filed a proof service evidencing service by mail on January 2, 2015; the Creditors do not suggest the proof of service is inaccurate. Instead, they claim the disclosure was late because it was required to be served by email but was served by mail. The Creditors are incorrect – neither the local rule they cite, LBR 7005-1(d)(1), nor the federal civil rule implemented by the local rule, Fed. R. Civ. P. 5(b)(2)(E), requires service by

electronic means. The rules merely fix the manner in which service by electronic means, if chosen by the party making service, must be accomplished.

Second, the Creditors complain that the trustee has not sought approval of the hourly rate Mr. McHale intends to charge, $475. It is this court's practice not to approve hourly rates to be charged by professionals prior to the time an application for compensation is filed. In fact, the court's standard form of order approving employment states that no hourly rate is approved unless expressly stated in that order (and it rarely, if ever, is stated in the order). The professional's hourly rate is a factor to be considered in determining whether his requested compensation is reasonable; thus, the appropriateness of the hourly rate is not determined in advance. Professionals employed in cases in this district are generally aware or are made aware of this practice, and understand that their hourly rates are not being approved in advance of their services being performed. The court finds no reason to depart from its normal practice here.

Third, the Creditors complain that the trustee has failed to disclose the amount of cash in the estate that is available for payment of the fixed fee and subsequent hourly rate compensation. Again, this is something the court generally does not require on an application to employ. The decision to hire a professional is a matter that generally should be left to the trustee's business judgment in the first instance, and the court finds no reason to require additional information here.

Finally, the Creditors contend the trustee does not need an expert witness to testify about his allegation that the debtor in this case was running a Ponzi scheme, an allegation the Creditors repeatedly claim they have offered to stipulate to. However, the offer to stipulate was made with a significant condition – in exchange, the trustee would have to dismiss his constructive fraudulent transfer and usury claims against the Creditors. The Creditors take the position those claims are invalid anyway, so the trustee would not be giving up anything. The question of the validity of the trustee's substantive claims in the adversary proceedings is not on the table with this application, and therefore, the court will not consider the Creditors' arguments on the issue at this time. The bottom line is that the trustee sees fit to hire an expert witness, and he has made timely disclosure of the identity of his expert witness. There is no reason for the court to consider the merits of the trustee's claims or the Creditors' defenses in determining whether to approve the employment of that expert witness.[1]

For the reasons stated, the court intends to grant the application. The court will hear the matter.

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1 It is a source of aggravation to the court that the Creditors' counsel repeatedly raises the merits of the trustee's substantive claims in the adversary proceedings and addresses them in extensive detail – here, she spent nine of the 13 pages of the opposition on those issues – in opposition to even the most garden-variety motion, such as this one. Counsel does herself no favors by forcing the court to review those arguments even where the merits of the proceedings will obviously have no effect on the disposition of the matter at hand.

36. 14-30870-D-11 ET-5 — SKANDIA FAMILY CENTER, INC. — MOTION TO USE CASH COLLATERAL 1-21-15 [96]

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

37. 15-20275-D-7 FF-1 — LEAH BROWN — MOTION TO COMPEL ABANDONMENT 1-15-15 [5]

Final ruling:

This is the debtor's motion to compel the trustee to abandon the estate's interest in her business, a café in Sacramento, California. The motion will be denied for the following reasons. First, the moving party failed to serve the State Board of Equalization, which is the largest scheduled creditor, at its complete address on the Roster of Governmental Agencies, as required by LBR 2002-1. (The moving party failed to utilize the mail code and used an incorrect zip code.) Second, the moving party failed to serve the parties to three lawsuits against the debtor that are listed in the debtor's Statement of Financial Affairs. The moving party served three attorneys, but it cannot be determined whether they are the attorneys for the plaintiffs in the lawsuits. Third, the moving party failed to serve the individual who is listed in the Statement of Financial Affairs as a co-defendant with the debtor in one of the three lawsuits. Given the very broad definition of "creditor" in the Bankruptcy Code (see § 101(5) and (10)), that individual is a creditor in this case, and should have been served with notice of this motion.

Finally, the notice of hearing does not comply with the court's local rules. The notice states, first, that if you do not want the court to order the abandonment of the business, or if you want the court to consider your views on the matter, "please note that no party in interest shall be required to file a written opposition and that opposition, if any, shall be presented at the hearing." However, the notice also states, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtor's attorney . . . as well as [the trustee and the United States Trustee]." Notice of Hearing, filed Jan. 15, 2015, at 2:6-13. The notice concludes with this admonition: "If you or your attorney do not take these steps, the Court may decide that you do not oppose this action and may grant the Motion." Id. at 2:14-15. The steps described in the notice regarding the mailing of written opposition are not required by the local rules for a motion brought under LBR 9014-1(f)(2), and the admonition that the court may grant the motion if these steps are not taken is plainly inaccurate. These directions and admonition may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice.

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

38. 14-30476-D-7 TAA-1 — JESUS SANCHEZ-AGUIRRE — CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-22-14 [20]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

39. 13-27995-D-7 GJH-2 — RON SUTTON'S WINNER'S CIRCLE, INC. — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BERRY AND BLOCK, LLP
1-14-15 [41]

40. 14-30670-D-11 — DAVID FOYIL — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
10-29-14 [1]