UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 18, 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.	15-20106-D-12	TOMMY/LINDA THOMAS	STATUS CONFERENCE RE: VOLUNTARY PETITION 1-8-15 [1]

2. 09-33808-D-11 KIP/ILLA SKIDMORE
13-2192
REYNOLDS V. CUSHMAN REXRODE CORPORATION ET AL

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CUSHMAN REXRODE CAPITAL CORPORATION, CUSHREX/SILVERTIP INVESTORS, L.P., ET AL.
1-16-15 [154]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

3. 14-25816-D-11 DEEPAL WANNAKUWATTE
KMR-1
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-15 [318]

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust 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.

4. 14-29219-D-7 CHRISTINE NEILSON

MOTION TO RECONSIDER ORDER DENYING WAIVER
1-16-15 [35]

5. 14-31725-D-11 TAHOE STATION, INC. CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 11-30-14 [1]

Tentative ruling:

This is the chapter 11 status conference in this case, which has been continued twice to require the debtor to fulfill its duties under the rules of bankruptcy procedure and the court's Order to (1) File Status Report; and (2) Attend Status Conference (the "Scheduling Order"). The debtor has now complied with the specific requirements the court pointed out at the two earlier hearings, but has not fulfilled its duties under the Bankruptcy Code and the court's local rules. In addition, the United States Trustee (the "UST") has filed a motion to dismiss or convert the case to chapter 7 (the "UST's motion"), which is also on this calendar, and two creditors have weighed in, one favoring dismissal and the other favoring conversion. The debtor has filed opposition to that motion, which the court has considered. For the following reasons, the court finds cause to dismiss or convert the case or to order the appointment of a chapter 11 trustee.

This case began in an inauspicious way, with the debtor intending to take advantage of the automatic stay just long enough to complete a refinance of its largest secured debt. Thus, the debtor did not file the schedules and statements required of any bankruptcy debtor by § 521(a)(1) of the Bankruptcy Code, and did not serve the Scheduling Order or file and serve a status report, both as required by the Scheduling Order. Instead, once the debtor believed the refinance was ready to close, it requested the case be dismissed, without noticing creditors, as required by Fed. R. Bankr. P. 2002(a)(4), and without addressing whether dismissal would be in the best interests of creditors and the estate, as required by § 1112(b)(1). The court cautioned the debtor at the initial session of the status conference that it was troubled by the debtor's behavior; nevertheless, since that time, although the debtor filed the remaining required schedules and statements, it has failed to comply with various other duties imposed on chapter 11 debtors-in-possession.

First and foremost is the debtor's failure, during the two and one-half months the case has been pending, to seek an order allowing the use of cash collateral or to seek approval of a stipulation, if any, for the use of cash collateral. The debtor operates at least two gas stations (see below) with convenience stores; there are first and second deeds of trust against both. The holder of the first deeds of trust against both properties, Valley National Bank, has filed a notice of non-consent to the use of cash collateral and a demand for sequestration of cash collateral. Although that notice was not filed until January 27, 2015, it is not the creditor's responsibility to notify the debtor of its non-consent. Rather, a debtor-in-possession whose cash is cash collateral, as defined in the Bankruptcy Code, "may not use, sell, or lease cash collateral" without either court approval, after notice and a hearing, or the consent of each entity with an interest in the cash collateral. § 363(c)(2) (emphasis added), made applicable to debtors-in-possession by § 1107(a).

Second, the debtor failed to comply with its duty to file certain documents required of small business debtors, as the debtor had designated itself on its petition.[1] The UST's office reminded the debtor's counsel by email on December 2, 2014, just two days after the case was filed, of the requirement to file those documents, noting that the statute required them to be appended to the petition, and stating that failure to file them within seven days might result in the filing of a motion to compel or a motion to dismiss or convert the case. The debtor's counsel

replied the same day, December 2, 2014, "we will do so." UST's Ex. 2. Yet by the time of the initial status conference, at which the debtor requested the case be dismissed, the debtor had not filed any of the required small business case documents. The debtor filed the required tax returns on December 29, 2014; the other documents were not filed until February 5, 2014, more than two months into the case. The debtor submitted conflicting testimony as to whether such documents existed. The debtor's president, Raman Singh, testified in a declaration filed December 29, 2014 that to the best of his knowledge and belief, no cash-flow statement, balance sheet, or statement of operations had been prepared for the debtor.[2] By contrast, an individual identifying himself as the debtor's treasurer, Sarbjit Kang, testified at the meeting of creditors on January 6, 2015 that the debtor maintains balance sheets, profit and loss statements, and cash-flow statements.

The debtor did not mention this discrepancy in its opposition to the UST's motion, although the motion clearly raised the issue. Instead, the debtor states it "had little choice but to proceed in this manner" because its "regular bookkeeper" had not prepared the small business documents at the time the case was filed. Debtor's Opp., filed Feb. 4, 2015, at 5:1-2. The debtor claims that on December 29, 2014 (one month into the case), it asked its regular bookkeeper to prepare the documents and received, on or around January 21, 2015, an annual income and expense statement, with supporting documentation, for the year ending December 31, 2014. The debtor does not explain why it did not file those documents. Instead, the debtor asked another bookkeeper to prepare a balance sheet, statement of operations, and cash-flow statement. Finally, on February 5, 2015, the debtor filed a two-page balance sheet as of December 31, 2014 and two one-page income statements for the year ended December 31, 2014, one for its North Tahoe station, the other for its South Tahoe station. There is no supporting documentation attached to any of the three documents.

As indicated, the statute required the debtor to append to its petition its most recent balance sheet, statement of operations, and cash-flow statement. Mr. Singh's testimony that no such documents had been prepared for the debtor suggests that these types of documents had never been prepared, which is a matter of serious concern for an entity that, according to its tax returns, grossed over $5 million in 2013. Further, given the cursory nature of the documents finally filed on February 5, the court finds it difficult to believe that the same information, as of November 30, 2014, was unavailable to the debtor's principals as of that date and could not have been compiled within a very short time after that date.

Third, the debtor failed to comply with its duty to immediately close all existing bank accounts and open a new general debtor-in-possession account, as required by LBR 2015-2(a). This was perhaps even more important in this case than in many others, as the debtor had $240,000 in existing bank accounts on the petition date, according to its Schedule B. In its opposition to the UST's motion, the debtor responds that on or around January 23, 2015 – almost two months into the case, the debtor opened a debtor-in-possession account "and is in the process of transitioning its credit card processing systems to such account so that it can close its pre-petition bank accounts." Opp. at 3:2-3. The debtor has offered no explanation for the delay except to suggest that the delay was caused by the debtor's intention to seek to dismiss the case once the refinance was approved.[3] This explanation supports the court's original suspicion that the debtor filed this case solely to take advantage of the benefits of chapter 11 without giving any thought to the quid pro quo.

Further, if the debtor is operating a business with employees, the local rule requires that the debtor open a tax account in addition to the general account, unless the court deems it unnecessary. LBR 2015-2(a). The subject of a tax account has not come up in the record; however, according to the debtor's tax returns, the debtor paid salaries and wages totaling $76,060 in 2013. Although the debtor refers in its opposition to the UST's motion to having opened one debtor-in-possession account, that is presumably the general account required by the rule. The opposition makes no reference to a debtor-in-possession tax account.

Fourth, the debtor failed to timely file its first monthly operating report, for November 30, 2014 through December 31, 2014, as required by LBR 2015-1(a) and (c). The report was due January 14, 2015; it was not filed until February 6, 2015.

Fifth, the debtor has failed to file an application for approval of the employment of its counsel, as required by § 327(a). Thus, the court has not had an opportunity to assess the critical questions of whether the debtor's counsel holds or represents an interest adverse to the estate and whether he is a disinterested person.

Sixth, the debtor has failed to comply with its duty of careful, complete, and accurate reporting in its schedules filed in the case. See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007). The following are examples:

(1) The balance sheet filed February 5, 2015 shows gasoline inventory and food mart inventory totaling $284,144, whereas, where required to list its inventory on its Schedule B, the debtor answered "None";[4]

(2) The debtor failed to schedule the California State Water Resources Control Board (the "Board" or "State Water Board") as a creditor despite noting in the Statement of Financial Affairs that the Board has a pending state court action against the debtor in which, according to the debtor's opposition to the UST's motion, the Board seeks approximately $19 million in fines and penalties from the debtor;[5]

(3) The debtor has referred to its "regular bookkeeper," but in answer to question 19 of the statement of affairs, where required to list all bookkeepers and accountants who within the prior two years kept or supervised the keeping of books and records of the debtor, the debtor answered "None";

(4) In answer to question 21 of the statement of affairs, where required to list all officers and directors and each stockholder holding 5% or more of the voting shares, the debtor answered "None," whereas Mr. Singh is elsewhere identified as the debtor's president and Mr. Kang has identified himself as its treasurer; further, the debtor's list of equity security holders lists three shareholders, each holding more than 5%;

(5) In answer to question 17 of the statement of affairs, where required to list the name and address of every site for which the debtor has received written notice by a governmental unit that it may be liable or potentially liable under or in violation of an environmental law, and where required to list all judicial and administrative proceedings under any environmental law in which the debtor is a party, the debtor answered "None," despite the fact that the debtor is a defendant in a state court action brought by the State Water Board and almost certainly had

received notices from the Board before the action was filed.

From these significant omissions, the court concludes that the debtor has not complied with its duty of careful, complete, and accurate reporting in its schedules and statement of affairs. The court notes also that these documents were signed by Mr. Singh under the penalty of perjury. In the same vein, at the meeting of creditors, on January 6, 2015, the UST's attorney asked Mr. Kang about the property at the debtor's street address, as listed on the petition. Mr. Kang replied that the property is a gas station owned by an entity called Tahoe Blue Property, Inc. Mr. Kang testified that the property had recently been leased to the debtor and that the debtor operates a gas station on the property. No such lease appears on the debtor's Schedule G, and nothing in the record of the case thus far suggests the debtor operates three gas stations, not two. This issue was squarely raised by the UST's motion, yet the debtor's opposition does not mention it at all.

For all of these reasons, the court finds cause to dismiss or convert this case or to appoint a chapter 11 trustee. The debtor contends unusual circumstances exist such that the court should deny the motion pursuant to § 1112(b)(2). Under that section, the court would have to find that (1) conversion or dismissal is not in the best interests of creditors and the estate; (2) the debtor has demonstrated a reasonable likelihood that a plan will be confirmed within the applicable time limits; and (3) the debtor has shown that the grounds for converting or dismissing the case include an act or omission of the debtor, other than loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation, for which there exists a reasonable justification and that will be cured within a reasonable period of time. The debtor cites the following as unusual circumstances: (1) its real properties have over $1 million in equity and its businesses operate at a profit; (2) its unsecured debt amounts to just $150,000 plus the disputed claim of the State Water Board, which should be resolved before any decision is made to liquidate the debtor's estate; (3) a plan and disclosure statement can be filed prior to this hearing; and (4) the debtor's acts or omissions cited as grounds for conversion or dismissal – the failure to file the small business case documents and the failure to close existing bank accounts and open new ones – were justified and have been cured. The court finds the debtor's multiple acts and omissions in this case, including its ongoing unauthorized use of cash collateral; its failure to comply with its duties regarding the small business debtor documents, its bank accounts, its monthly operating reports, and its employment of counsel; and its failure to disclose all creditors and likely failure to disclose all assets, were far from justified. Thus, the court finds cause for conversion, dismissal, or appointment of a trustee.

As between conversion and dismissal, the UST recommended conversion because, according to its Schedule B, the debtor had, as of the petition date, $240,000 in funds in bank accounts and only $150,000 in unsecured debt.[6] (The UST's motion was filed before the State Water Board had made its appearance in the case, with its $19 million claim.) Secured creditor Valley National Bank, holder of the first deeds of trust against the debtor's two gas stations, favors dismissal, arguing that (1) the debtor's funds are the Bank's cash collateral, which could not be paid to the unsecured creditors, and (2) conversion to chapter 7 would keep the automatic stay in place, to the detriment of the secured creditors. The Bank argues that a chapter 7 trustee would be unlikely to operate the debtor's gas stations and convenience stores, which would diminish the value of the secured creditors' collateral. The State Water Board favors conversion, arguing it appears from the schedules that the debtor has assets from which to pay creditors, including the Board.

The court believes the better solution would be the appointment of a chapter 11 trustee, an independent third party who could operate the gas stations; address cash collateral issues; determine whether there are other unsecured (or secured) creditors that, like the State Water Board, the debtor failed to list; determine whether the debtor is operating the gas station Mr. Kang has said it leases from a third party; preserve the very significant cash assets of the estate; and file a plan or recommend conversion or dismissal of the case from an unbiased perspective. The court notes that the debtor values its real properties as having over $800,000 in equity over and above the amounts of the first and second deeds of trust. The court does not, of course, take these figures at face value; however, they do suggest the possibility of an equity cushion to protect the secured creditors pending a trustee's evaluation of the case.

The court will hear the matter.

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1 Section 1116, subd. (1), requires a small business debtor to "append to [its] petition" its most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return. In the alternative, the debtor may "append to [its] petition" a statement under oath that no such documents have been prepared. Subd. (1)(B). The debtor did not append either the documents or such a statement to its petition.

2 As the debtor's tax returns for 2013 were attached to the declaration, the images of the declaration, as well as the tax returns, are restricted and are not accessible by the public. They are on the court's docket at DN 20.

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> Debtor respectfully submits that a delay in opening a debtor-in-possession account does not constitute "cause" materially sufficient to warrant conversion or dismissal of the case, especially in view of the Debtor's initial intent to seek dismissal of the proceeding following First Credit Bank's expected purchase of the secured promissory notes held by Valley Business Bank.

Opp. at 5:23-28.

4 In answer to question #20 of the statement of affairs, the debtor was required to list the dates of the last two inventories taken of its property, the name of the person who supervised each, and the dollar amount and basis of each. The debtor answered, "None."

5 The debtor noted in the statement of affairs that the debtor had not been served and had not appeared. Despite these facts, there is no circumstance under which the State Water Board was not a creditor, as defined by the Bankruptcy Code, on the petition date. The debtor was therefore unequivocally required to schedule it as such.

6 According to the debtor's December operating report, the $240,000 had increased to over $300,000 by the end of December, including funds held by Aria Oil Company in a credit account.

6. 14-31725-D-11 UST-1 — TAHOE STATION, INC. — MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE
1-13-15 [32]

See ruling on item no. 5.

7. 14-31929-D-7 MPD-2 — MEDICI LOGGING, INC. — MOTION TO EMPLOY WEST AUCTIONS AS AUCTIONEER(S)
1-20-15 [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 to employ West auctions as auctioneer is supported by the record. As such the court will grant the motion to employ West auctions as auctioneer. Moving party is to submit an appropriate order. No appearance is necessary.

8. 14-31929-D-7 MPD-3 — MEDICI LOGGING, INC. — MOTION TO SELL AND/OR MOTION FOR WAIVER OF RULE 6004(H), FEDERAL RULES OF BANKRUPTCY PROCEDURE
1-20-15 [19]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the Trustee's Motion for (1) Authorization to Sell Bankruptcy Estate Assets by Auction, and (2) Waiver of Rule 6004(h), Federal Rules of Bankruptcy Procedure is supported by the record. As such the court will grant the Trustee's Motion for (1) Authorization to Sell Bankruptcy Estate Assets by Auction, and (2) Waiver of Rule 6004(h), Federal Rules of Bankruptcy Procedure. Moving party is to submit an appropriate order. No appearance is necessary.

9. 13-29030-D-7 — WILLIAM/JANET CHENG — MOTION TO DISQUALIFY JUDGE BARDWIL
11-10-14 [703]

Final ruling:

This is the debtors' motion filed November 10, 2014, which appears on the court's docket as DN 703. On December 5, 2014, the court issued a Memorandum Decision and Order denying the motion; these are on the court's docket as DNs 737 and 738. On December 3, 2014, the debtors had filed a "Supplemental Notice of Amended Notice to Correct the Hearing Date . . ." ("Supplemental Notice") by which they purported to "correct the hearing date," stating that "Hearing is on February 18, 2015 at 10:00 a.m. . . . ." The court was not aware of the Supplemental Notice at the time it issued the Memorandum Decision and Order denying the motion. However, the filing of the Supplemental Notice could not and did not operate to override the Order denying the motion or to somehow revive the motion.

Therefore, the motion having been resolved by order entered December 5, 2014, the matter is removed from calendar. No appearance is necessary.

10. 10-47536-D-7 DOUGLAS KIRKWOOD — MOTION TO AVOID LIEN OF BENEFICIAL CALIFORNIA, INC.
ACK-1 — 1-20-15 [78]

Final ruling:

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

11. 14-30936-D-7 MARKELL WASHINGTON — AMENDED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-23-15 [29]

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.

12. 14-29738-D-7 DANIEL/CINDY MIRANDA — MOTION FOR RELIEF FROM AUTOMATIC STAY
BHT-1 — 1-19-15 [13]
WELLS FARGO BANK, N.A. VS.

13. 14-29547-D-7 FRANCIS/ISABEL FAHRNER — CONTINUED MOTION TO COMPEL ABANDONMENT
FF-1 — 9-30-14 [9]

Tentative ruling:

This is the debtors' motion to compel the trustee to abandon the real property that is their residence. The trustee opposed the motion, and the hearing was continued to allow for further briefing, which has been completed. For the following reasons, the motion will be granted.

The debtors value the property at $125,000, and have claimed a $175,000 exemption in it, as they are over the age of 65. There are no liens against the property. The trustee originally opposed the motion on three grounds: (1) he had not had enough time to investigate the value of the property; (2) the time to object to the debtors' claim of exemption had not run; and (3) even if the claim of exemption were allowed, the debtors would lose the exemption in the event the residence were sold in the future and the exempt proceeds were not reinvested within six months in another dwelling for the debtors.[1] It appears from the trustee's supplemental briefing that he has abandoned the first two of these arguments. For the third, the trustee relies on Wolfe v. Jacobson (In re Jacobson), 676 F.3d 1193 (9th Cir. 2012), and In re Hyman, 967 F.2d 1316 (9th Cir. 1992).

The trustee states his position as follows:

> Here, the Debtors are elderly and the Residence is unencumbered by any liens. If the Residence is abandoned, the Trustee would be left without recourse to recapture the Residence if, for example, the Debtors passed away (making it impossible to meet the reinvestment requirement) or if the Debtors sell the Residence and do not reinvest the proceeds in a new homestead. Thus, the Motion would deprive the Trustee of the right to ensure compliance with the exemption statute. . . . This would substantially prejudice the Trustee and creditors, by effectively allowing debtors to avoid the reinvestment requirement by seeking and obtaining abandonment at the commencement of the case. This is surely not the result that should be permitted to occur given the specific language of the California homestead exemption statute.

Trustee's Supplemental Briefing, filed Jan. 19, 2015 ("Supp."), at 4:5-11, 4:16-20. The debtors' position, on the other hand, is that "[i]f this argument is accepted a Debtor in California would never be allowed to compel abandonment of real property. . . . This leads to an absurd conclusion." Debtors' Reply, filed Dec. 10, 2014, 3:14-17.

The parties cast the matter in black and white terms – the trustee's argument depends on the proposition that the reinvestment requirement should prevent abandonment, at least in the early months of a case, in all cases or at least in all cases where the debtors are over 65; the debtors suggest the reinvestment requirement should never be considered on a motion to compel abandonment. The court need not determine either of those issues because the decision here is readily reached by consideration of a couple of competing policies, as applied to the facts of this case.[2] First, there is a policy disfavoring the compelling of abandonment. "'[A]n order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered.'" Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (9th Cir. BAP 2000), quoting In re K.C. Machine & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987).

The competing policy is that a bankruptcy trustee is under a duty to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest . . . ." § 704(a)(1) of the Bankruptcy Code. In addition, and akin to the latter policy, "the sale of a fully encumbered asset is generally prohibited." In re KVN Corp., 514 B.R. 1, 5 (9th Cir. BAP 2014) (citations omitted). Thus, the United States Trustee's Handbook for Chapter 7 Trustees states:

> A chapter 7 case must be administered to maximize and expedite dividends to creditors. A trustee shall not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. . . . Accordingly, the trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors, including unsecured priority creditors, before administering a case as an asset case.

Id. at 6, quoting U.S. DOJ Exec. Office for U.S. Trs., Handbook for Chapter 7

Trustees ("Handbook") at 4-1 (2012) (emphasis added). "In asset cases, when the property is fully encumbered and of nominal value to the estate, the trustee must immediately abandon the asset . . . ." KVN Corp. at 6, quoting Handbook at 4-7.

The court is aware, as the trustee emphasizes, that the debtors' property is not encumbered at all. However, the debtors' claim of exemption is, for purposes of evaluating this motion, the functional equivalent of an encumbrance because it stands in the way of the trustee realizing the value of the property for the benefit of the estate. The trustee does not explain why this situation should be treated differently from the case of a fully-encumbered property which, according to the Handbook, the trustee should abandon, except to suggest the debtors may die during the pendency of the case. True, if the debtors happened to die while the case was still open and the trustee thereafter sold the property, it would be impossible for the debtors to reinvest their exempt share of the proceeds in a new homestead, as required by the California statutes. In that situation, the exemption would be forfeited (Jacobson, 676 F.3d at 1199), and the trustee would realize the value of the property. But that is an "if" the court is not prepared to hang its hat on. In short, the mere fact that the debtors are over 65 is not sufficient for the court to conclude that what the trustee speculates might happen is likely to happen while the case is pending. The court is aware the trustee is administering a different property in the case, and therefore, the case may not be closed as quickly as some others. But that alone is not sufficient for the court to speculate that the case will outlive the debtors.

Further, although the court is generally aware that property values have begun to increase after a long downturn, the property would have to appreciate by 40% before the value would overtake the amount of the debtors' exemption claim. The trustee has not suggested that is likely to occur within the life of the case. Nor has he suggested the debtors intend to sell the property.

The trustee's citations to Jacobson and Hyman are not dispositive. The Jacobson court held that when a debtor does not, within the six months after receiving them, reinvest the exempt proceeds of a homestead sold post-petition, he forfeits the exemption. 676 F.3d at 1199. In the present case, the property has not been sold and the court has no reason to believe it is likely to be sold within the time the court would expect this case to remain open. In Hyman, the debtors tried to prevent the trustee from marketing their residence, arguing they had claimed the entire homestead as exempt; that is, the property itself, not just the $45,000 in value listed on their schedule of exemptions. The court held that "[t]he California statute gives the [debtors] a $ 45,000 exemption as of the time of sale, not a $ 45,000 equity interest in the property." 967 F.2d at 1321. Relying on that holding, the trustee in the present case states that "under the California homestead exemption statute, the Debtors are claiming the proceeds in the sale of the homestead as exempt, and not the Residence itself. Thus, this is not a sufficient basis to compel abandonment." Supp. at 5:1-3. The first sentence is accurate – the debtors have claimed an exemption in the proceeds of sale of the property if a sale occurs; they have not claimed as exempt an equity interest in the property itself. The trustee's conclusion – that "this is not a sufficient basis to compel abandonment" – is irrelevant for the simple reason that the debtors' claim of exemption in the proceeds of a sale, should one occur, as opposed to a claim of an equity interest in the property itself, is not the basis on which they seek to compel abandonment.

"Before granting a request for abandonment of estate property, the bankruptcy court must find either (1) the property is burdensome to the estate; or (2) the

property has both inconsequential value and benefit to the estate. Conversely, if the court denies the motion, it follows that there must be findings that administration of the property will cause either benefit or value to the estate." Piatt v. Solomon (In re Piatt), 2008 Bankr. LEXIS 4746, *21 (9th Cir. BAP 2008) (citation omitted). Here, the court is unable to find, based solely on the fact that the debtors are over 65, that the administration of the property will cause either benefit or value to the estate. The trustee does not suggest the debtors intend to sell the property once it is abandoned, and the possibility that the debtors may die prior to the close of the case is simply too speculative for the court to find it at all likely. Thus, the court concludes that (1) based on the value of the property and the amount of the debtors' exemption claim, the property has no present value and would cause no present benefit to the estate; and (2) the property is not likely to be of value or benefit to the estate during the pendency of the case. Accordingly, the motion will be granted.

The court will hear the matter.

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1 This reinvestment requirement is found in Cal. Code Civ. Proc. §§ 704.720(b) [proceeds of forced sale of exempt homestead are exempt for six months after judgment debtor receives them] and 704.710(c) [where exempt proceeds are used toward purchase of new dwelling within the six-month period, new dwelling qualifies as a homestead].

2 The court notes that although this motion was filed just one week into the case, the case has now been pending nearly five months.

14. 14-32452-D-11 JOHN RODRIGO — STATUS CONFERENCE RE: VOLUNTARY PETITION
12-30-14 [1]

Tentative ruling:

This is the initial status conference in this chapter 11 case. The court does not ordinarily issue tentative rulings for chapter 11 status conferences; however, the court has several concerns about this case.

By the terms of the Order to (1) File Status Report; and (2) Attend Status Conference (the "Scheduling Order"), the debtor was required to serve the Scheduling Order on, among others, all secured creditors. The debtor served the Scheduling Order by the required date, but failed to serve six of his secured creditors. These are creditors the debtor failed to include on his master address list; thus, they were not served with the Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines either. The debtor filed his schedules three weeks after the case was filed, and at that time, he filed a new master address list on which he added the six secured creditors who had not been listed originally. However, at that time, which was two days after he had served the Scheduling Order, he failed to serve the Scheduling Order on those six creditors. Thus, those creditors have never received notice of the time and place of the status conference, or of the other matters addressed in the Scheduling Order.

The debtor did serve his Status Conference Report on five of those six creditors, along with the United States Trustee and the other creditors originally listed and served. He did not serve the sixth of those creditors, the Riverside

County Tax Collector. The Status Conference Report does not contain the time or place of the hearing. (And it states the date of the status conference as February 18, 2013.) Thus, the five creditors who were not served with the Scheduling Order but were served with the Status Conference Report have not received notice of the time or place of the hearing.

On February 3, 2015, the debtor filed a Notice of Continued Chapter 11 Bankruptcy Case, Meeting of Creditors & Deadlines, which he served on all creditors, including all six of the creditors who were not listed on his original master address list. That notice advises of the date, time, and place of the continued meeting of creditors; however, it does not contain any of the other dates set forth in the court's Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines, including the deadlines for the filing of proofs of claim, objections to discharge and dischargeability, and objections to exemptions. The debtor's notice does not contain the Explanations included on the reverse side of the court's notice.

The court has additional concerns. According to the debtor's schedules, he owns an eight-bedroom residence in Palm Springs that is an elder care facility. He also owns two rental properties in Palm Springs and five rental properties in Hawaii. Yet on his Schedule I, he has lumped all his income from the elder care facility and the seven rental properties into a single number, <$4,500>, as his net income. By the plain language of the form of Schedule I, the debtor was required to "attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." He failed to do so, which has rendered his Schedule I of very little assistance in evaluating his financial situation.

Next, according to his Statement of Financial Affairs, answer to question 18, the debtor operates an elder care facility in Palm Springs known as Retreat Las Palmas II. Yet on his Schedule G, where required to list all executory contracts and unexpired leases, the debtor answered "None." It is possible, although unlikely, that the elder care facility and all seven rental properties were vacant on the date of filing; if any was occupied, the debtor was required to schedule his tenants by name and address and to give them notice of this case. (Given the very broad definition of "creditor" under the Bankruptcy Code, all tenants must be scheduled, even those with month-to-month leases.) Further, as the debtor lives in Sacramento, it seems reasonable to assume he has employees who run the elder care facility in Palm Springs and that he has executory contracts for such things as food, laundry service, housekeeping, and health care. If the elder care facility is leased to an independent operator, the debtor was required to schedule any contracts and leases with that person or entity. And where required in the statement of affairs to disclose all property held for another, the debtor answered "None," whereas with an elder care facility and seven rental properties, it seems likely the debtor holds security and cleaning deposits.

Finally, the court is concerned that despite having taken three weeks post-petition to prepare his schedules, the debtor answered "None" where required to disclose household goods; books, pictures, collections, tapes, and CD's; clothing; jewelry; firearms, sports, photographic, and other hobby equipment; interests in businesses; furnishings, fixtures, equipment, and supplies used in a business; and claims against others. Given the debtor's circumstances, it seems very unlikely that the true answer to all of those questions is None. The court therefore has reason to question whether the debtor has complied with his duty of careful, complete, and accurate reporting in his schedules filed in the case. See Hickman v.

Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007).

The court will conduct the initial status conference as scheduled, but also intends to continue the hearing and require the debtor to serve the Scheduling Order, the Status Conference Report, and a notice of continued status conference on all creditors, including those previously omitted. The debtor will also be required to serve the court's Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines, with Explanations on the reverse side, on the creditors who were not previously served.

The court will hear the matter.

15. 14-27953-D-7 CLAUDIA TENNIS — MOTION TO VACATE ORDER GRANTING RELIEF FROM STAY BY CREDITOR BAYVIEW LOAN SERVICING, LLC
12-29-14 [65]

Final ruling:

The motion is denied for the following reasons: (1) the moving party failed to include an appropriate docket control number as required by LBR 9014-1(c); (2) the moving party failed to file a separate notice of hearing as required by LBR 9014-1(d)(2); (3) the Declaration of Gary Farrar filed in support of this motion is not signed; and (4) the Amended Notice of Motion and Motion to Vacate Order Granting Relief From Stay by Creditor Bayview Loan Servicing, LLC fails to include the information required by LBR 9014-1(d)(2). As a result of these procedural defects, the court will deny the motion by minute order. No appearance is necessary.

16. 14-26862-D-7 DMW-2 VLADIMIR/YELENA TIMCHUK — MOTION TO SELL
1-15-15 [23]

17. 14-20064-D-7 GLENN GREGO — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-14-15 [181]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the objection of Pacific Western Bank (the "Bank") to the debtor's claims of exemption made in an amended Schedule C filed December 15, 2014. The debtor has filed a response in opposition to the motion, and the Bank has filed a reply. For the following reasons, the objection will be sustained.

On his amended Schedule C, the debtor claimed the following exemptions, citing the following statutes, and listing the value of the property and the value of his claimed exemptions as follows. In an attachment to the schedule, he added the information set forth below with respect to each listing:

Description	Law Providing Exemption	Value of Claimed Exemption	Current Value of Property
Lawsuit, Grego v. Whitaker CV128369 (see attached)	CCP section 704.720	$150,000.00	$1,000,000.00
[In attachment:] San Luis Obispo Court case, consolidated with CV138142 and 14CVP-0032 for Homestead proceeds following wrongful foreclosure of homestead.			
Lawsuit, Grego v. Patel, CV128369 (see attached)	CCP section 704.140(b)	unlimited	$1,000,000.00
[In attachment:] Consolidated with 14CVP-0032 and CV138142, San Luis Obispo County Superior Court for personal injury damages.			
Lawsuit, Grego v. Patel CV128369 (see attached)	Title 11 U.S. Code Section 362(b)(4)	Unlimited, not property of the estate	$1,000,000.00
[In attachment:] Pursuant to Regulatory Power of the Superior Court.			

Thus, to summarize, the debtor has claimed an interest in a single asset – a state court lawsuit that has apparently been consolidated with two other lawsuits – as exempt under two different exemption statutes, Cal. Code Civ. Proc. §§ 704.720 and 704.140(b), and has also claimed the lawsuit as not property of the estate, pursuant to § 362(b)(4) of the Bankruptcy Code. The Bank objects to all three of these claims, and the debtor has responded with a defense of all three. The court will take the three claims in reverse order.

The Bank correctly objects to the third claim – the claim that the lawsuit is not property of the estate – on the ground that § 362(b)(4) pertains to the automatic stay and is not applicable here. That subsection does not govern claims of exemption or questions of what is or is not property of the estate. It does pertain, however, to the exercise of a governmental unit's police and regulatory power, and that is why the debtor cited it. The debtor argues that his lawsuit, which is against, among others, an individual the state court appointed as receiver of property then owned by the debtor, is part of the superior court's exercise of its police and regulatory power to supervise the actions of and require accountings from an individual the court has appointed as a receiver. This authority of the superior court, the debtor claims, "is excluded from the Bankruptcy Court's jurisdiction [citing § 362(b)(4)]." Debtor's Response, filed Feb. 4, 2015 ("Resp."), at 9:2-3. Further, the debtor implies that if this court were to exercise jurisdiction over the lawsuit in any way, it would be intruding on the police power of the superior court: "The inference that a Bankruptcy Court could intrude on the police power of the Superior Court is universally rejected to the knowledge of this Debtor. Debtor requires an explanation of why there would be some exception to that rule in this particular Court." Id. at 9:17-20.

First, § 362(b)(4) does not pertain to this court's jurisdiction. Second, the debtor has cited no authority for the proposition that the police and regulatory powers referred to in that subdivision include a state court's power to "control and oversee the actions of" a receiver it has appointed (Resp. at 9:16), and it appears they do not.[1] Third, even if the state court's authority over its receivers does fall within the scope of § 362(b)(4), the court is aware of no authority for the proposition that a debtor may piggyback onto the state court's authority so as to claim, as the debtor does here, that his lawsuit against a state court appointed receiver is not property of the estate. This court has determined that the lawsuit is property of the estate (see civil minutes for Jan. 7, 2015), and the superior court also, in Case No. CV128369 – the lawsuit the debtor claims is not property of the estate, has now ruled that "[a]s a debtor, Grego does not have standing to pursue this action, which is now property of the Chapter 7 bankruptcy estate." Debtor's Ex. D, [Proposed] Order Sustaining Demurrer, Ex. A, at 5. For these reasons, the Bank's objection to the debtor's claim on his amended Schedule C that the lawsuit is exempt as not being property of the estate will be sustained.

The debtor also claims the lawsuit as exempt pursuant to Cal. Code Civ. Proc. § 704.140(b), which permits the exemption of an award of damages or a settlement based on personal injury, to the extent necessary for the support of the judgment debtor, his or her spouse, and dependents. The Bank objects, claiming the lawsuit is not a personal injury matter. The debtor's first response is that, although the lawsuit is nominally about trespass, conversion, failure to account, and interference with business relations, it is really about a continuing violation of the automatic stay, and "[v]iolations of the Automatic Stay are governed by rules applicable to personal injury." Resp. at 8:7-8. That is, according to the debtor, "[t]he type of damages to be awarded are those consistent with personal injury damages, as opposed to property damages which are also included." Id. at 8:8-9. This argument is made without authority and simply does not make sense.

The debtor also argues that the receiver's conduct he complains of in the lawsuit caused him emotional distress as well as financial damages. The debtor cites the receiver's alleged "imposing herself on the Debtor's then property and business," thereby "depriv[ing] him of his daily income" (id. at 8:10-11), and her taking possession of various articles of personal property, including family heirlooms and memorabilia, as well as various allegedly very valuable items, all of which, the debtor claims, "is the type of damage which is consistent with emotional distress in addition[] to financial distress." Id. at 8:19-20. Although the Ninth Circuit Bankruptcy Appellate Panel has held that personal injury can include emotional distress for purposes of § 704.140 (Sylvester v. Hafif (In re Sylvester)), 220 B.R. 89, 93 (9th Cir. BAP 1998)), the debtor's claim in this case is a stretch too far.

In Haaland v. Corporate Management, 172 B.R. 74 (S.D. Cal. 1989), the debtors claimed as exempt a malpractice claim against their attorney for conduct that allegedly resulted in the loss of their home to foreclosure. The court examined the legislative history of Cal. Code Civ. Proc. § 704.140, and concluded the section generally pertains to bodily injury, not property loss, and that the debtors' attempt to apply it to emotional distress from losing their home required too broad a construction of the statute. 172 B.R. at 77.

In the present case, the only reference to emotional distress in the debtor's state court complaint is this:

Defendants' actions were intentional and designed to harm Plaintiff

> financially, commercially and emotionally, and were malicious. Defendants intended to deprive Plaintiff of his money and property in order to convert that money and property to themselves without compensating Plaintiff and to destroy Plaintiff's ability to successfully operate the hotel.

Debtor's Ex. A, at 18:13-17. The court finds that extending the definition of emotional distress to include the debtor's distress over losing his money and property, including his ability to run his hotel, would extend the statute to virtually any type of property loss at all. In other words, it would essentially eliminate the "personal injury" nature of the exemption, and thus, go far beyond what the legislature intended in Cal. Code Civ. Proc. § 704.140. See Haaland, 172 B.R. at 77. For this reason, the Bank's objection to the debtor's claim of exemption under that section will be sustained.

Finally, the debtor has claimed an exemption under Cal. Code Civ. Proc. § 704.720, which provides for the exemption of a homestead or its proceeds. (In the portion of the lawsuit directed against the Bank, the debtor claims the Bank wrongfully foreclosed on his residence (a different property from the one that was the subject of the receivership); thus, in the debtor's view, his claim for damages for wrongful foreclosure qualifies as proceeds of a homestead exemption, for purposes of § 704.720.[2]) The Bank's first objection to this claim – that the exemption statute does not apply to voluntary liens – is a correct statement of the law: an exemption does not prevail over a voluntary lien. That is not a reason, however, for disallowing the claim of exemption, which protects a debtor's equity in the property, if any, over and above the amount of voluntary liens. For its second objection – that the proceeds of a lawsuit cannot qualify as a homestead – the Bank cites only Cal. Code Civ. Proc. § 704.710(c), which merely defines a homestead as a dwelling. The Bank does not address the question of whether lawsuit proceeds may qualify as proceeds of a homestead under § 704.720(b).

The debtor, in turn, devotes most of his opposition to two questions – whether the state court's ruling on the Bank's demurrer to his second amended complaint was correct and whether that ruling conflicts with the standard of proof this court enunciated in a ruling on an earlier motion for relief from stay. Both issues are irrelevant to the debtor's claim of exemptions. In short, both parties have missed the mark on the § 704.720 issue.

The section provides:

> (a) A homestead is exempt from sale under this division to the extent provided in Section 704.800.
>
> (b) If a homestead is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the homestead or the proceeds received as compensation for a homestead acquired for public use are exempt in the amount of the homestead exemption provided in Section 704.730.

Cal. Code Civ. Proc. § 704.720. The section does not apply here for the simple reason that there is no homestead and no proceeds of a homestead that the debtor may exempt from property of the bankruptcy estate. It is a "well settled rule that property cannot be exempted unless it is first property of the estate." Rains v. Flinn (In re Rains), 428 F.3d 893, 906 (9th Cir. 2005). The property that was apparently the debtor's homestead was foreclosed on several years ago through a sale

that generated no surplus proceeds over and above the amount due the Bank. Thus, the property itself is not property of the estate and there have never been any proceeds that could have come into the estate. In other words, so far as a homestead or proceeds of a homestead that might be exempt under § 704.720, none exist in this case. What is property of the estate is the cause of action for wrongful foreclosure; that is, a claim for damages. In other words, what might be recovered on account of the claim, if anything, is money damages, not proceeds of the foreclosure sale. The exemption statute on which the debtor relies, § 704.720, does not provide for the exemption of money damages or a claim for money damages as a result of wrongful foreclosure.

The debtor contends the homestead exemption statute, § 704.720, extends to the proceeds of any sale. He is not correct. Subsection (a) provides that a homestead is exempt to the extent provided in § 704.800. Section 704.800, in turn, provides that if no bid is received at a sale of a homestead pursuant to a court order for sale that is sufficient to pay the amount of the homestead exemption and all liens and encumbrances on the property, the property may not be sold and the same judgment creditor may not seek another court order for sale for a year. Thus, § 704.800 (and in turn, § 704.720(a)) applies to a judicial lien sale, not a foreclosure sale under a voluntary deed of trust.

Subsection (b) of § 704.720 provides that "[i]f a homestead is sold under this division or is damaged or destroyed or is acquired for public use," the proceeds of sale or insurance or other indemnification for damage or destruction or the proceeds received on account of a taking for public use are exempt in the amount of the homestead exemption provided in § 704.730. The statute is very specific as to the types of proceeds that are exempt; that is, as to the particular events that may generate exempt proceeds of a homestead. These include and are limited to (1) a sale of the homestead "under this division"; (2) damages to or destruction of the homestead; and (3) a taking of the homestead for public use. The list does not include a non-judicial foreclosure under a voluntary deed of trust, and the proceeds of such a foreclosure sale are not within the scope of the statute.[3]

In short, there is nothing here for the debtor to exempt under § 704.720 – no homestead and no proceeds of a homestead. Had a third party made a cash bid at the Bank's foreclosure sale which resulted in proceeds over and above the amount due the Bank, there might have been something to argue about here, although even that seems unlikely, as the statute provides for an exemption in proceeds of a homestead sold at a judicial lien sale. Here, the only asset that is property of the estate is a cause of action for wrongful foreclosure. The debtor has failed to demonstrate that such a cause of action or the proceeds of it may be claimed as exempt.

For the reasons stated, the court concludes that none of the debtor's claims of exemption is tenable, and the objection will be sustained. The objection will be sustained by minute order. No appearance is necessary.

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1 "In the automatic stay context, we generally have construed the phrase 'police or regulatory power' to 'refer to the enforcement of state laws affecting health, welfare, morals, and safety, but not regulatory laws that directly conflict with the control of the res or property by the bankruptcy court." City & County of San Francisco v. PG&E Corp., 433 F.3d 1115, 1123 (9th Cir. 2006) (citation omitted).

2 "[T]he Claim of Exemption of the homestead proceeds is not based on residency in the property, but rather based on the unjustified and unlawful seizure and

foreclosure of the property and the failure to turn over the amount of Debtor's homestead interest in the proceeds of $150,000.00." Resp. at 2:14-18.

3 Such a foreclosure sale is not a sale of the homestead "under this division." "This division" means Division 2 of Title 9 of the Code of Civil Procedure. Title 9 governs "Enforcement of Judgments"; Division 2 governs "Enforcement of Money Judgments." The Bank's foreclosure sale was not in aid of the enforcement of a judgment; thus, the exemption statutes in the division and the title do not apply.

The debtor's citation to Wolfe v. Jacobson (In re Jacobson), 676 F.3d 1193 (9th Cir. 2012), and Broadway Foreclosure Investments, LLC v. Tarlesson, 184 Cal. App. 4th 931 (2010), is unavailing for the same reason – both cases pertain solely to judicial lien sales, not to non-judicial foreclosure sales by trust deed holders.

18. 14-20064-D-7 GLENN GREGO — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-2 — 1-16-15 [185]
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed and that the trustee has filed a statement of non-opposition. 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.

19. 14-26673-D-7 JENNIFER KRUGER-HURST — CONTINUED MOTION TO SELL
BLL-3 — 12-1-14 [44]

20. 14-23397-D-7 MICHAEL ANTHONY/MARIA ORTIZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 1-13-15 [36]
WELLS FARGO AUTO FINANCE VS.

Final ruling:

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

21.	14-29905-D-11 BSJ-3	RAVINDER GILL	MOTION TO USE CASH COLLATERAL 2-3-15 [55]
22.	14-32105-D-7 NII-1 FIRST BANK VS.	NAOMI LEBUS	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-27-15 [15]
23.	15-20614-D-11	M.K. AUTO, INC.	ORDER TO SHOW CAUSE RE DISMISSAL 1-29-15 [6]
24.	15-20614-D-11 FWP-1 NJS PROPERTIES LLC VS.	M.K. AUTO, INC.	MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T. 2-4-15 [20]

25. 13-30317-D-7 JAMES COREY
MMM-1

MOTION BY MOHAMMAD M. MOKARRAM TO WITHDRAW AS ATTORNEY
1-30-15 [43]

26. 14-27541-D-7 JAMES TEETERS
PLC-4

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
2-2-15 [40]

Tentative ruling:

This is the debtor's motion to convert this chapter 7 case to a chapter 13 case. The motion was noticed pursuant to LBR 9014-1(f)(2); therefore, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

First, the court notes that two earlier motions for the same relief have been denied because of various procedural defects, among them that the moving party had failed to serve the Employment Development Department at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b). The department is listed on the debtor's Schedule E as holding a claim for unemployment taxes in the amount of $4,497. Yet despite the court's earlier prompting, the moving party has again failed to serve the department at its Roster address. In addition, the department has never been noticed of this case at its Roster address.

Second, the record indicates that, although the debtor appeared at several sessions of the meeting of creditors in the early months of the case, he did not appear at the sessions held November 4, 2014 and January 13, 2015. There is no indication the debtor's attorney, who substituted into the case by order dated October 30, 2014, has appeared at any of the sessions held after he substituted in. Considering that the chapter 7 trustee has not concluded the meeting of creditors (a continued session is set for February 24, 2014), if the trustee opposes this motion and indicates that the debtor has failed to comply with his duty to appear at the meeting of creditors, the court will be inclined either to deny the motion [1] or to continue the hearing and require the debtor to appear at the meeting of creditors and to serve the Employment Development Department at its Roster address.

The court will hear the matter.

1

> **[T]he broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.**

Marrama v. Citizens Bank, 549 U.S. 365, 375 (2007).

27. 14-29547-D-7 FRANCIS/ISABEL FAHRNER — MOTION TO EMPLOY KATZAKIAN REAL ESTATE AS REALTOR(S)
PA-5 — 2-4-15 [67]

28. 14-32452-D-11 JOHN RODRIGO — MOTION FOR DETERMINATION OF WHETHER APPOINTMENT OF A PATIENT CARE OMBUDSMAN IS REQUIRED
UST-2 — 2-3-15 [45]

29. 11-46559-D-7 MARK THOMAS — MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
SLH-2 — 2-3-15 [21]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by American Express Centurion Bank (the "Bank"). The motion will be denied for the following reasons. First, the attorney who signed and filed the motion and related documents is not the attorney of record for the debtor, and thus, may not participate in the case. LBR 2017-1(b)(1) ["no attorney may participate in any action unless the attorney has appeared as an attorney of record."]. The attorney who filed the motion has not appeared in this case in any of the ways described in LBR 2017-1(b)(2), and in particular, has not substituted in to the case as the debtor's counsel.

Second, the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank by certified mail to the attention of an "Officer or Agent for Service of Process." This method was insufficient because the rule requires service on an FDIC-insured institution such as the Bank by certified mail to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h).

This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (see Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of an "Officer or Agent for Service of Process" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

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

30. 14-30670-D-11 DAVID FOYIL CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 10-29-14 [1]

Tentative ruling:

This is a continued status conference in this chapter 11 case. The court has the following concerns. First, the debtor's schedules disclose two creditors who were not included on the master address list, were not served with the scheduling order and debtor's status report, and have never been given formal notice of the case, if any. These are Ford Credit, listed on the debtor's original Schedule D as being owed $56,000, and Diane Anderson, listed on Schedule G as the debtor's landlord. A third set of creditors, Mike Hangs and Traci Maddix, listed on Schedule G as tenants of the debtor, were added to the master address list by amendment filed February 3, 2015 and were served with copies of an amended Statement of Financial Affairs and amended Schedules A, B, D, and E at that time. They have not been served with the scheduling order or status report, as required by the scheduling order.

Also on February 3, 2015, the debtor added Susan Didriksen to his Schedule F as being owed $4,000 on account of a "Chapt 7 Stip." The debtor served Ms. Didriksen with his amended Statement of Financial Affairs and amended Schedules A, B, D, and E – but not his amended Schedule F – at that time. That was the first time Ms. Didriksen was formally made aware of this case although it has been pending for over three months. The debtor also served the amended Statement of Financial Affairs and amended Schedules A, B, D, and E, but not the amended Schedule F, on Steve Brewer, another creditor the debtor added to his Schedule F in the amendment filed February 3, 2015. Ms. Didriksen and Mr. Brewer have not been served with the scheduling order or status report, as required by the scheduling order. (They are among the 20 largest unsecured creditors.)

According to the amended Schedule F, the debtor still owes Ms. Didriksen $4,000 on an agreement whereby Ms. Didriksen, as chapter 7 trustee in one the debtor's two prior cases, Case No. 11-31046, sold the debtor's accounts receivable, having a face value of $27,499, to the debtor for $10,000, payable in five monthly installments of $2,000 each. The sale was approved by the court in that case by order dated November 1, 2012; thus, the $10,000 purchase price should have been paid off long since, but apparently the debtor has paid only $6,000 to the trustee and still owes $4,000. The court notes that the debtor chose to purchase a new 2013 Ford Expedition in August of 2013 on which he became obligated to make payments of $833 per month.[1] He has also scheduled in this new case a 2012 Ford E-350, which he values at $18,000 and against which he has scheduled no liens.

The court has additional concerns about Case No. 11-31046, primarily that the case is still open. There have been no motions to abandon filed in that case, either by the trustee or the debtor; thus, all property of the estate in that case remains property of the estate in that case, including the debtor's two rental properties listed by the debtor as assets in this new case. So far as the court can tell, those properties are not property of the estate in this new case, and the debtor has no right to exercise any control over them.[2]

In addition to those two real properties, the debtor scheduled two manufactured homes in the prior case, a 1991 Home Systems and a 2003 Skyline. Neither was abandoned, and the stay was not lifted to as to either. Yet in his amended statement of affairs in this new case, the debtor indicates he voluntarily

surrendered the Skyline to the secured creditor in November of 2013. As for the Home Systems home, it remains property of the estate in the prior case, yet the debtor scheduled it as his asset in the present case.

Next, the debtor has made significant changes to his schedules and statement of affairs in this case by amendments filed February 3, 2015. He reported the value of his life insurance policy as $5,000, whereas he valued it on the original schedule at $200, and added a $3,300 judgment against a third party, not previously scheduled. He removed Ford Credit from his Schedule D altogether, whereas he had originally scheduled it as being owed $56,000. The debtor also included in his amended statement of affairs four lawsuits and a legal separation proceeding, none of which was listed in his original statement of affairs, and disclosed for the first time his voluntary surrender of the Skyline manufactured home in November of 2013. He also changed the dates of operation of the Law Office of David Foyil and EqualJusticeLawGroup.com and removed from the statement of affairs the listing of David Foyil Insurance, which he had listed on the original statement of affairs as being in operation from 2008 to 2011. As the debtor is required to list all of his businesses operated within the past six years, the deletion of the insurance business appears inaccurate.

These changes would be significant but less consequential in the ordinary case than they are here. The debtor in this case is an experienced bankruptcy attorney, who files many cases every year. It seems reasonable to expect such an individual to be acutely alert to his duty of careful, complete, and accurate reporting in his schedules filed in the case;[3] the court finds, however, that he did not comply with that duty when he filed his original schedules and statement of affairs despite having taken an additional two weeks beyond the petition date to complete them.

Finally, the court made clear to the debtor at the initial session of the status conference that his monthly operating reports must be brought up to date and that the court would expect him to have filed, by the time of the next hearing, the motions to value collateral he had indicated back on November 20, 2014 would likely be filed within two weeks. The debtor replied that the monthly operating reports were ready to be filed but for a couple of errors he needed to correct, and that the motions to value were also ready to be filed. However, as of this date, he has filed no monthly operating reports and no motions to value collateral.[4] The monthly operating report for October 29 through November 30, 2014 was due December 15, 2014, and the report for January 2015 was due February 14, 2015. The issue of the motions to value collateral is problematic for two reasons. First, the properties the debtor has indicated he will seek to value are property of the estate in his prior case. Second, on his amended Schedule A filed February 3, 2015, he scheduled the value of each property as exactly equal to the amount owed against it.

To conclude, the court has significant doubts about the debtor's good faith in filing and prosecuting this case. For the reasons discussed above, the court finds that sufficient cause exists to dismiss or convert the case to chapter 7. The court will hear the matter.

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1 Retail Installment Sale Contract attached to proof of claim of Ford Motor Credit, filed Dec. 16, 2014.

2 The holder of the deed of trust on one of those properties obtained relief from stay in the prior case; however, as the debtor has listed the property on his

Schedule A in the new case, the creditor has apparently not foreclosed. The debtor has not disclosed any foreclosures in his Statement of Financial Affairs in this case.

3 See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007).

4 On November 19, 2014, the debtor did file a document on the form for a monthly operating report. However, he indicated the report covered the month ended October 1, 2014, whereas this case was not filed until October 29, 2014.

31.	14-30586-D-7 JRR-1	CHRISTOPHER REESE	TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 1-13-15 [18]

32.	14-30523-D-7 RJM-1	RANDY MARSTON	CONTINUED 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 hearing was continued to permit the moving party to correct a service defect. Specifically, the moving party was required to file a notice of continued hearing, and to serve it, along with the motion and supporting documents, on creditor Cach, LLC in compliance with Fed. R. Bankr. P. 7004(b)(3). The moving party was also to serve the notice of continued hearing on all others who were served with the original notice.

On February 4, 2015, the moving party filed proofs of service evidencing service of a "Notice of Continuance of Motion" on Cach LLC, in the manner required by Rule 7004(b)(3), and on all others who were served with the original notice. The moving party also served the motion and supporting documents on Cach LLC. The problem is that the moving party did not file a notice of continued hearing or the Notice of Continuance of Motion he apparently served. Thus, the court cannot determine whether appropriate notice was given.

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