UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 1, 2017 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.	16-28305-D-7 TAHIR PERVEZ APN-1 HYUNDAI MOTOR FINANCE VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-24-17 [13]

Final ruling:

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

2. 16-28305-D-7 TAHIR PERVEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-2 — 1-24-17 [19]
HYUNDAI MOTOR FINANCE VS.

Final ruling:

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

3. 17-20405-D-7 EFREN/ELIZABETH MEMORACION — MOTION TO COMPEL ABANDONMENT
DBJ-1 — 1-25-17 [7]

Tentative ruling:

This is the debtors' motion to compel the trustee to abandon the estate's interest in the debtors' business, Giselle's Care Home. The motion will be denied because the moving parties failed to serve all creditors. In particular, they failed to serve any of the 11 parties to residential care facility contracts added to the debtors' Schedule G by amendment filed February 7, 2017.

Fed. R. Bankr. P. 6007(a) requires the trustee or debtor in possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors . . . ." On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, even though the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a) of Fed. R. Bankr. P. 6007. See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)). Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties to residential care home contracts with the debtor. The court notes that the debtors also failed to comply with Bankr. P. 1007(a)(1), which requires debtors to list parties to executory contracts on their master address list.

Because the moving parties failed to serve all creditors, the motion will be denied. In the alternative, the court will consider continuing the hearing to permit the moving parties to cure the service defect. The court will hear the matter.

4.	17-20405-D-7 UST-1	EFREN/ELIZABETH MEMORACION	MOTION FOR ORDER DIRECTING APPOINTMENT OF A PATIENT CARE OMBUDSMAN 2-1-17 [15]

5.	16-28407-D-7 JHW-1 TD AUTO FINANCE, LLC VS.	JOSE LOPEZ	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 1-19-17 [15]

Final ruling:

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

6.	16-28310-D-7 NLG-1 FIRST TECH FEDERAL CREDIT UNION VS.	JASON MAXWELL	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-19-17 [11]

Final ruling:

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

7.	16-28118-D-7 WFM-1 BANK OF AMERICA, N.A. VS.	TAUS/JANEEN GASIOR	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-24-17 [13]

Final ruling:

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

8. 14-25820-D-11 DMC-17 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DIAMOND MCCARTHY, LLP FOR CHRISTOPHER D. SULLIVAN, SPECIAL COUNSEL 1-27-17 [1106]

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.

9. 16-26323-D-7 DMB-1 — JOSEPH CARNATION AND SILVIA VELARDE — MOTION TO AVOID LIEN OF JAMES WADDELL 1-30-17 [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.

10. 16-26323-D-7 DMB-2 — JOSEPH CARNATION AND SILVIA VELARDE — MOTION TO AVOID LIEN OF SIERRA CENTRAL CREDIT UNION 1-30-17 [66]

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.

11. 16-26323-D-7 DMB-3 — JOSEPH CARNATION AND SILVIA VELARDE — MOTION TO AVOID LIEN OF LES SCHWAB TIRES 1-30-17 [60]

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.

12. 16-25239-D-7 DIVINDER HUNDAL — CONTINUED MOTION TO COMPEL ABANDONMENT
DAO-3 — 1-18-17 [77]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon the estate's interest in a 2014 Dodge Ram 3500 truck. The hearing on this motion came on for initial hearing on January 18, 2017 and at that time the hearing was continued to February 1, 2017. At the continued hearing on February 1, 2017 the court then set a briefing schedule and continued the matter for final hearing to be held March 1, 2017. For the following reasons, the motion will be granted.

In support of the motion, the debtor has filed her and her spouse's declarations, in which they testify they believe the truck would bring only $23,000 "in a sale to any party, whether a private party, dealer, auction house, etc." Debtor's Decl., DN 79, at 1:26. The debtor's spouse testifies he has been using the truck in his recycling business for two years and is familiar with its condition and manufacturer's options. He adds that he purchased the truck new two years ago from a dealer for approximately $43,000. The debtor has also submitted an NADA report for a truck of the same type, which shows an average trade-in value of $23,625 and a clean retail value of $28,800. There is a lien against the truck in the amount of $22,760. The debtors have claimed exemptions in the truck totaling $12,000 under the tools of the trade and wild-card exemptions.

The trustee, on the other hand, has submitted her own declaration in which she testifies she had the truck appraised on January 23, 2017 by Kirk's Appraisal Service. She has filed a copy of the appraisal report as an exhibit. The appraisal shows a value of $38,679 for the truck. The trustee testifies, "Based on my assessment, which includes all previous investigations into the value of the Truck and the appraisal, I am informed and believe that the Truck has a value of approximately $38,679.00." K. Husted Decl., DN, at 106, at 3:4-6. The problem with the trustee's appraisal report is that it is not authenticated by a declaration of the appraiser, and is therefore hearsay and inadmissible. The trustee's own testimony is inadmissible as she does not demonstrate she has the knowledge or expertise to render an opinion of the truck's value. The trustee has had ample opportunity to obtain and submit admissible evidence in opposition to the motion.

Thus, the only admissible evidence as to the value of the truck is the debtor's and her spouse's testimony. As the truck's value is virtually equivalent to the amount due on the lien against it, the court concludes the truck is of inconsequential value and benefit to the estate and the motion will be granted.[1]

The court will hear the matter.

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1 **The trustee states in her opposition she may object to the debtor's claim of exemptions in the truck, citing the debtor's initial failure to schedule it and her failure to claim it as exempt until she filed a second amended Schedule C. In fact, the trustee has filed a motion to extend her time to object to the debtor's claim of exemptions in the truck, which is also on this calendar. As the court determines the value of the truck to be almost the same as the amount owed against it, the question of the debtor's exemption claims is irrelevant to this motion.**

13. 16-27439-D-7 UST-1 — CHRISTINA BUNNELL — MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)
2-1-17 [27]

14. 10-26347-D-7 MFB-5 — LESLIE BRACK — MOTION FOR ORDER RETAINING JURISDICTION
1-22-17 [68]

Final ruling:

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

15. 16-27747-D-7 HLG-1 — RUSSELL/DONNA HENRY — MOTION TO AVOID LIEN OF NATIONAL CREDIT ADJUSTERS, LLC
1-31-17 [14]

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.

16. 10-42050-D-7 HLC-155 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF RATISH NARAYAN, CLAIM NUMBER 155
1-16-17 [885]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Ratish Narayan, Claim No. 155, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Ratish Narayan, Claim No. 155, and the trustee is to submit an appropriate order. No appearance is necessary.

17. 10-42050-D-7 HLC-156 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF VINESH CHAND, CLAIM NUMBER 156 1-16-17 [890]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Vinesh Chand, Claim No 156, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Vinesh Chand, Claim No 156, and the trustee is to submit an appropriate order. No appearance is necessary.

18. 10-42050-D-7 HLC-158 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF RISHI RAM, CLAIM NUMBER 158 1-16-17 [895]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Rishi Ram, Claim No. 158, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Rishi Ram, Claim No. 158, and the trustee is to submit an appropriate order. No appearance is necessary.

19. 10-42050-D-7 HLC-159 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF KALIAPPA GOUNDER, CLAIM NUMBER 159 1-16-17 [900]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Kaliappa Gounder, Claim No. 159, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Kaliappa Gounder, Claim No. 159, and the trustee is to submit an appropriate order. No appearance is necessary.

20. 10-42050-D-7 HLC-160 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF PRASHNEEL NATH, CLAIM NUMBER 160 1-16-17 [905]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Prashneel Nath, Claim No. 160, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Prashneel Nath, Claim No. 160, and the trustee is to submit an appropriate order. No appearance is necessary.

21. 10-42050-D-7 HLC-161 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF SANIL KUMAR CHAND, CLAIM NUMBER 161 1-16-17 [910]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Sanil Kumar Chand, Claim No. 161, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Sanil Kumar Chand, Claim No. 161, and the trustee is to submit an appropriate order. No appearance is necessary.

22. 10-42050-D-7 HLC-162 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF CHAND KUMARI, CLAIM NUMBER 162 1-16-17 [915]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Chand Kumari, Claim No. 162, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Chand Kumari, Claim No. 162, and the trustee is to submit an appropriate order. No appearance is necessary.

23. 10-42050-D-7 HLC-164 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF SALESH KUMAR, CLAIM NUMBER 164 1-16-17 [920]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Salesh Kumar, Claim No. 164, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Salesh Kumar, Claim No. 164, and the trustee is to submit an appropriate order. No appearance is necessary.

24. 10-42050-D-7 HLC-167 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF AUNIL PRAKASH, CLAIM NUMBER 167 1-16-17 [925]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Aunil Prakash, Claim No. 167, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Aunil Prakash, Claim No. 167, and the trustee is to submit an appropriate order. No appearance is necessary.

25. 10-42050-D-7 HLC-171 — VINCENT/MALANIE SINGH — OBJECTION TO CLAIM OF SHIU KUMARI, CLAIM NUMBER 171
1-16-17 [930]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the trustee's objection to the claim of Shiu Kumari, Claim No. 171, has been filed and the objection is supported by the record. Accordingly, the court will sustaining the objection to the claim of Shiu Kumari, Claim No. 171, and the trustee is to submit an appropriate order. No appearance is necessary.

26. 10-50658-D-7 RLC-5 — ABRAHAN/NORMA RAMOS — MOTION TO AVOID LIEN OF JONATHAN NEIL & ASSOCIATES, INC.
1-31-17 [40]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Jonathan Neil & Associates, Inc. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

27. 10-50658-D-7 RLC-6 — ABRAHAN/NORMA RAMOS — MOTION TO AVOID LIEN OF DAL TILE SSC WEST
1-31-17 [45]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Dal Tile SSC West, Inc. The motion will be denied because there is no proof of service on file. The motion will be denied by minute order. No appearance is necessary.

28. 16-28160-D-7 TGM-1 SELENE FINANCE, LP VS. — PATRICIA GONSALVES — MOTION FOR RELIEF FROM AUTOMATIC STAY
1-22-17 [12]

Final ruling:

This matter is resolved without oral argument. This is Selene Finance, LP'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.

29. 10-41963-D-7 JEFFREY/PAMELA LATHAM
ELG-1

MOTION TO AVOID LIEN OF SNIDER LEASING CORP., PEARSONS READY MIX CONCRETE INC. AND ROYER WELDING & MAINTENANCE, INC.
1-30-17 [20]

Final ruling:

This is a motion ostensibly of the debtors to avoid judicial liens held by Royer Welding & Maintenance, Inc.; Pearsons Ready Mix Concrete, Inc.; and Snider Leasing Corp. The motion will be denied for the following reasons. First, the moving papers were signed by an attorney who has not substituted into this case, and thus, is not the debtors' attorney of record.

Second, the moving parties served the lienholders only through the attorneys who obtained the lienholders' respective abstracts of judgment, whereas there is no evidence those attorneys are authorized to receive service of process on behalf of the lienholders 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).

Finally, Snider Leasing's judgment was obtained and its abstract of judgment was recorded over a year after the debtors' petition was filed and over a year after their discharge was entered. The debtors' memorandum of points and authorities cites authorities suggesting "[t]he debtor's right to avoid a judicial lien is determined as of the date the bankruptcy petition is filed." Debtors' Memo., DN 22, at 4:17-18. If that is the case (and the court expresses no opinion on the issue), the debtors would not be entitled to avoid the lien because it did not exist on the date their petition was filed. Equally important, the debtors have submitted no evidence as to whether the debt on which the judgment is based was a pre- or a post-petition debt,[1] and if the latter, no authority for the proposition a debtor is entitled to avoid a judicial lien arising out of a post-petition debt.

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

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1 The court notes that the debtors did not schedule a debt to Snider Leasing on their bankruptcy schedules and did not disclose any lawsuit by Snider Leasing on their statement of financial affairs.

30. 16-28281-D-7 CAROLYN BODEN
MRL-1

MOTION FOR SUBSTITUTION AS THE REPRESENTATIVE AND/OR MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
1-28-17 [12]

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 Substitution as the Representative and for Waiver of Post-Petition Education Requirement is supported by the record. As such the court will grant the Motion for Substitution as the Representative and for Waiver of Post-Petition Education Requirement. Moving party is to submit an appropriate order. No appearance is necessary.

31. 15-29283-D-7 SONNIE/RENE STEVENS — MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
KWS-2 — 2-1-17 [22]

Tentative ruling:

This is the debtors' motion for an order holding Eastern Plumas Health Care Foundation, Inc. (the "Foundation") in contempt of court for violating the debtors' discharge. The debtors seek an award of compensatory damages, deterrent sanctions, and reasonable attorney's fees and costs. The Foundation has filed opposition. For the following reasons, the court intends to continue the hearing to permit the debtors to serve the correct entity. Preliminarily, the court will observe that both the motion and the opposition, although probably unintentionally, have had the effect of unnecessarily consuming the court's time.

The debtors commenced this case on November 30, 2015 and received a chapter 7 discharge on March 14, 2016. The debtors have filed as exhibits copies of invoices from an entity calling itself, on the invoices, Eastern Plumas Health Care, dated April 4, April 18, and June 25, 2016; that is, all post-discharge. Each of these invoices was addressed to debtor Sonnie Stevens and included charges for health care services both before and after November 30, 2015; that is, both pre- and post-petition. Finally, on June 26, 2016, Eastern Plumas Health Care sent Sonnie Stevens a "FINAL NOTICE!" advising that his account was past due and that "a referral to a collection agency will adversely affect [his] credit rating." Debtors' Ex. E. This time, however, the account balance was for services rendered only post-petition – on January 5, 2016. Although they refer to invoices received in October and December of 2016 (as discussed below), the debtors did not submit copies of any invoices dated during the seven months between the June 26, 2016 invoice and the date this motion was filed, February 1, 2017.

On April 26 and April 28, 2016 (two months before the June 25 and June 26 invoices were sent), the debtors' attorney, Kyle Schumacher of Sagaria Law, sent an "IMPORTANT NOTICE" to Eastern Plumas Health Care Foundation, Inc. The court speculates that the debtors' attorney concluded the appropriate respondent was Eastern Plumas Health Care Foundation, Inc. because that is the only entity with the words "Eastern Plumas" that is registered with the Secretary of State's office (that is, the only one that has anything to do with health care). The Secretary of State's website discloses no entity named Eastern Plumas Health Care. Mr. Schumacher's notice was specifically addressed to "Jeri Nelson, Registered Agent,"[1] and read as follows (in its entirety):

> **I represent Sonnie Stevens in his Chapter 7 Bankruptcy case. The attached is a Court generated notice of bankruptcy filing.**
>
> **My client has filed for bankruptcy. You must stop taking any further action to collect against my client.**
>
> **Please immediately return any seized funds, release any writs of garnishment and dismiss any pending judicial proceedings.**
>
> **These matters can usually be taken care of with a simple phone call. Please have your attorney contact me as soon as possible.**

Debtors' Exs. C and D. Mr. Schumacher included with each notice a copy of the Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline, with the

Certificate of Notice (proof of service) generated by the Bankruptcy Noticing Center. Mr. Schumacher did not refer in his notices to the debtors having received their discharge and did not enclose a copy of the discharge order, although the debtors had, by the time he sent the notices, received the discharge.

Mr. Schumacher's notice was obviously a form letter, in that it referred to seized funds, writs of garnishment, and pending judicial proceedings, none of which was involved here, and did not refer to Eastern Plumas Health Care's invoices.[2] And although Mr. Schumacher referred to these matters usually being taken care of with a simple phone call, there is no indication he tried to call Eastern Plumas Health Care at the phone number on its invoices. Instead, he testifies, "[o]ur office spent 13.46 hours litigating this stay [discharge] violation for our clients" (Schumacher Decl., DN 25, at 2:14), for which he would like the Foundation to pay him $4,559 in fees. Mr. Schumacher's failure to try a "simple phone call" calls into serious doubt his testimony that "[a]ll fees that appear on the ledger were necessarily incurred to achieve the desired result in this case and all described tasks billed were actually and necessarily performed." Id. at 3:1-2.

The good faith of the debtors themselves in prosecuting this motion is also in doubt because they did not list either Eastern Plumas Health Care or the Foundation on their schedules or master address list, and thus, neither entity received a copy of the discharge from the Bankruptcy Noticing Center or, apparently, in any other way. There is no evidence either entity was aware of the debtors' bankruptcy filing at the time the April 4 and April 18 invoices were sent. The June 25 invoice, which, as indicated above, included both pre- and post-petition charges, is another matter. By that date, the Foundation, at any rate, and Jeri Nelson, its agent for service of process, had been notified by Mr. Schumacher's April 26 and April 28 notices of the bankruptcy filing. The Notice of Chapter 7 Bankruptcy Case that Mr. Schumacher enclosed with his notices put the Foundation on notice that "[t]he debtors [were] seeking a discharge" and that the deadline for filing an objection to discharge was March 7, 2016. (Thus, by the time the Foundation received copies of the Notice of Chapter 7 Bankruptcy Case from Mr. Schumacher, the objection deadline had already run.)

So far as the harm to the debtors is concerned, however, Eastern Plumas Health Care apparently realized its mistake sometime on June 25 or June 26 because on June 26, it sent the debtor the "final notice," which included a total account balance of $146.20 for the January 5, 2016 (post-petition) services only. In other words, it appears Eastern Plumas Health Care sent out the June 25 invoice, which included debts that had been discharged and ones that had not, despite the Foundation's earlier receipt of Mr. Schumacher's April 26 and April 28 notices, but rectified its mistake the next day. For some unknown reason, Mr. Schumacher sent the same form letter, but this time, to Eastern Plumas Health Care, not the Foundation, on September 9. On October 27, he sent a follow-up letter, also to Eastern Plumas Health Care, requesting it acknowledge the illegal collection attempt or state it would cease further collection activity. He added he would file an action within 14 days if a response was not received. Despite these later notices, there is no evidence Eastern Plumas Health Care sent the debtors any further invoices for pre-petition debts after June 26.[3] In short, it appears from the evidence presented the debtors' emotional distress was in large measure caused by their failure to list Eastern Plumas Health Care on their schedules or master mailing list; that is, it was self-inflicted.

On the other hand, the court is not impressed by the Foundation's opposition. The Foundation takes the position it is the wrong party here. The Foundation states

it is a non-profit public benefit corporation, formed "to solicit and administer funds and properties to be used to support and promote the health care and community service activities of Eastern Plumas Health Care, a California health care district." J. Nelson Decl., DN 31, 2:5-7. According to the opposition, "[t]he Foundation does not provide health care service and it does not bill or collect for health care services provided by any person or entity" (id. at 2:8-9), and it "has never sent Debtors a billing statement for any service on behalf of any person or entity." Id. at 2:11-12. That is, in the Foundation's view, it was wrongly named in the debtors' motion as the respondent.

The entity that sent the invoices to the debtors, Eastern Plumas Health Care, is, according to its website, "a small, non-profit, critical access hospital district . . . ." Eastern Plumas Health Care, "About EPHC: Who We Are." http://www.ephc.org/about.php. Accessed 22 Feb. 2017. From this, the court concludes Eastern Plumas Health Care is a California special district.[4] Although it does not say so, the Foundation apparently takes the position the entity that should have been named in the debtors' motion is Eastern Plumas Health Care – the special district. The court is willing to accept the Foundation's assertion it is a legal entity separate and distinct from Eastern Plumas Health Care, although the court has found the Foundation mentioned only on the website of Eastern Plumas Health Care, which itself hardly makes the distinction clear. "Eastern Plumas Health Care Foundation is a 501(c)3 non-profit corporation. All donations to Eastern Plumas Health Care [note, not the Foundation] are tax deductible." Eastern District Health Care, "Ways to Give." http://www.ephc.org/ways-to-give.php. Accessed 22 Feb. 2017.

There are other connections between the Foundation and Eastern Plumas Health Care that, in the court's view, are significant to the way the Foundation's opposition was handled. First, Jeri Nelson, who signed a declaration in support of the Foundation's opposition as its CFO, testifying the Foundation does not provide or bill for health care services and has never sent the debtors a bill, is also the CFO of Eastern Plumas Health Care (the special district), according to its website. Further, the address of Eastern Plumas Health Care's hospital, lab, board of directors, human resources, medical records, and billing departments is the same as the address of the Foundation, as listed on the Secretary of State's website and the same as the address of the Foundation's agent for service, Jeri Nelson. This is almost certainly the same Jeri Nelson to whom Mr. Schumacher's notices were sent. That is, the CFO of both the Foundation and Eastern Plumas Health Care – the entity that sent the invoices – received his notices about the debtors' bankruptcy filing.

The two entities also share the same attorneys, the firm of Porter Simon, in Truckee. Porter Simon is the firm that filed the Foundation's opposition to this motion. In response to the motion, Steven Gross, of Porter Simon, sent an email to the debtors' attorney beginning, "I represent Eastern Plumas Health Care District." Ex. A to Steven Gross Decl. He noted, however, that the motion is against the Foundation and that "[t]he District and the Foundation are two separate and distinct legal entities." Id. Mr. Gross continued:

> The Foundation does not provide health care service and never provided health care services to your clients or billed them for such services. The District does provide health care services and has provided such services to your clients. [¶] There appears to be confusion as to the entities and bills. The District has written-off and is not seeking collection of any discharged debt. It has, however, provided health care services to your clients subsequent to the discharge date and is attempting to collect from them for those services.

Id. Mr. Gross concluded his email by saying that if the Foundation were forced to file a response to the motion and to appear, it would seek to recover its fees and costs. The Foundation has backed off that threat, but it does maintain, incorrectly, "[t]here is simply no connection between the Foundation and the health care services provided by the District to the Debtors." Foundation's Opp., DN 30, at 5:4-5.

Significantly, at no time has the district – Eastern Plumas Health Care – whom Mr. Gross acknowledged he represents and of which Ms. Nelson is the CFO, admitted it sent the June 25 invoice after it had received notice of the debtors' bankruptcy filing, through Mr. Schumacher's April 26 and April 28 notices addressed to the Foundation, but also specifically addressed to Ms. Nelson, by name. Nor has the district admitted that the June 25 invoice included debts that had been discharged, although it clearly did. The Foundation is the only entity that has opposed the motion and the only opposition it has raised is that it is the wrong entity. Apparently, the Foundation and the district chose that path because the district was not expressly named as the respondent in the motion and because it was, technically, not served (although Ms. Nelson, through whom the Foundation was served, is also the district's CFO). It is the court that has had to ferret out the dates of the invoices and of Mr. Schumacher's notices and to review the debtors' schedules to determine the district was not given notice of the bankruptcy filing and had no such notice until after the first two invoices were sent.

In short, the court finds the debtors' declarations and exhibits painted an inaccurate picture of the cause of their anxiety and distress. The district, in its turn, sent its June 25 invoice to the debtors two months after its CFO was aware of the debtors' bankruptcy filing. And despite being fully aware of its role as the correct respondent to this motion, through its CFO and its attorney, the district has chosen to hide behind the Foundation so as to evade responsibility. The court is making no determination at this time as to the amount appropriate to compensate the debtors for the emotional harm, if any, caused them by the district, although the court is determining that the attorney's fees reasonably required to rectify the situation are nowhere near the amount sought. If the debtors wish to continue to pursue this matter, the court will continue the hearing and require them to serve Plumas County Health Care in accordance with Fed. R. Bankr. P. 7004(b)(6), as required by Fed. R. Bankr. P. 9014(b). The district is cautioned that the court will not look favorably on any further attempt to evade entirely the responsibility for at least one invoice that included pre-petition debt and that was sent months after the district was aware of the debtors' bankruptcy case. Based on the limited amount at stake, the court suggests it would behoove the parties to attempt a resolution short of further court intervention.

The court will hear the matter.

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1 Ms. Nelson, who will reappear below, is the Foundation's agent for service of process, as registered with the California Secretary of State.

2 The court does not mean to suggest that the appropriate recipient should not have matched Mr. Schumacher's notices to its invoices – the notices plainly reference Sonnie Stevens as the debtor, the same individual to whom the invoices were addressed.

3 Although Mr. Stevens testifies he received bills again in October and December of 2016, the debtors did not submit copies and the court has no reason to

believe they were not, like the June 26 billing, for post-petition services only.

4 **According to the California Special Districts Association, "special districts are a form of local government created by a local community to meet a specific need." California Special Districts Association, "Special Districts." http://www.csda.net/special-districts/. Accessed 22 Feb. 2017.**

32.	16-27383-D-7 EMM-1 HSBC BANK USA, N.A. VS.	LUCERIO ANTONIO	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-31-17 [24]

33.	15-27697-D-7 KAZ-1 DEUTSCHE BANK NATIONAL TRUST COMPANY VS.	ROMEO/SONIA GAPASIN	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-30-17 [21]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on March 1, 2016 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

34.	17-20405-D-7 DBJ-2	EFREN/ELIZABETH MEMORACION	MOTION TO CONVERT CASE TO CHAPTER 13 2-7-17 [21]

35. 16-20027-D-7 TIFFANI CO — MOTION TO EMPLOY CHRISTOPHER D. HUGHES AS ATTORNEY
NOS-1 — 2-9-17 [54]

Tentative ruling:

This is the trustee's application to employ Nossaman LLP as the trustee's counsel in this case. The application was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns.

First, attorney Christopher Hughes ("Counsel") states in his supporting declaration that Nossaman reviewed a list of the parties involved in the case for purposes of determining whether it had any "connections" with them. However, Counsel answers that question with a statement that "the Conflicts Management System did not identify any actual or potential conflicts between the key parties and Nossaman's current clients." There are two problems with that statement. First, it is the role of the court, not the professional proposed to be employed, to determine whether actual or potential conflicts exist that might preclude employment. "The duty of professionals is to disclose all connections with the debtor, debtor-in-possession, insiders, creditors, and parties in interest . . . ." In re Park-Helena Corp., 63 F.3d 877, 882 (9th Cir. 1995) (emphasis added).[1] Second, the connections required to be disclosed are not limited to those with current clients; the professional must disclose connections with former clients, to the extent they can be discovered, and with a firm's partners, associates, and staff.

As far as clients are concerned, counsel discloses that Nossaman has represented a particular bank, which he names and which is identified in the debtor's schedules, in matters unrelated to the debtor or this bankruptcy case. However, as far as connections with the firm's partners, associates, and staff are concerned, counsel includes four statements of what appears to be boilerplate,[2] apparently tailored to satisfy the disclosure requirement in every case, concluding with the required language that, "except as set forth above," Nossaman has no connections with the debtor or the other parties described in Fed. R. Bankr. P. 2014(a). As discussed below boilerplate is not sufficient disclosure to satisfy the Rule.

The professional proposed to be employed must ensure that all connections between the parties described in the rule, on the one hand, and the firm's partners, associates, and staff, on the other hand, are disclosed. There "may be room for debate at the fringe about what 'connections' need be disclosed" (B.E.S. Concrete, 93 B.R. at 236), such as situations where a particular utility company is a creditor and everyone in the city gets its power from that utility. However, mere boilerplate that could be used in every case creates uncertainty as to whether Counsel engaged in the necessary steps to ascertain whether there exists connections that are required to be disclosed.[3] Here, there is no evidence the partners, associates, and staff of Nossaman have been made aware of the identities of the debtor, creditors, and other parties described in Rule 2014(a) and asked to disclose any connections. "The burden is on the person to be employed to come forward and make full, candid, and complete disclosure." B.E.S. Concrete, 93 B.R. at 237.

The court's second concern is with certain language in counsel's declaration that is based on the fact that Christopher Hughes previously represented the trustee earlier in the case, while he was an attorney with Hughes Law Corporation. Mr. Hughes states:

> Although Nossaman is not seeking approval of fees at this time, since I was employed as counsel of record effective [date], at the appropriate time, Nossaman intends to submit an application to approve fees for professional services rendered and reimbursement of expenses incurred in the Bankruptcy Case incurred by me and/or Hughes Law Corporation while I was counsel of record for the Trustee, which includes services provided before and after I joined Nossaman.

That sentence states literally that Nossaman intends to seek approval of fees for services performed by Mr. Hughes and/or by Hughes Law Corporation during a time before Mr. Hughes became associated with Nossaman. Counsel will need to explain why Nossaman's stated intention does not violate § 504(a) of the Code or clarify this statement. At first glance, the last sentence of the same paragraph [4] suggests that Nossaman and Hughes Law Corporation will not submit applications for the other's fees; however, that conclusion appears to conflict with Nossaman's intention as quoted above. In addition, on closer examination, it is possible the last sentence of the paragraph, concluding with the phrase "through another fee application," means only that Nossaman and Hughes Law Corporation will not submit applications for the same fees; that is, for duplicative fees. In short, counsel will need to confirm that Nossaman will not be submitting applications for fees for services performed by Christopher Hughes (or otherwise by Hughes Law Corporation) before Mr. Hughes became affiliated with Nossaman.

The court will hear the matter.

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1 "It was [the professional's] duty to reveal all of his connections with the bankrupt, the creditor or any other parties in interest. Had he made the disclosures then it would have devolved upon the court to determine whether conflicts existed. General Order 44 [the Bankruptcy Act precursor to Rule 2014] does not give the attorney the right to withhold information because it is not apparent to him that there is a conflict." In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 236 (Bankr. E.D. Cal. 1988), quoting In re Haldeman Pipe & Supply Co., 417 F.2d 1302, 1304 (9th Cir. 1969). "The ultimate determination of whether there is a disqualifying conflict and whether the representation is in the best interest of the estate lies within the discretion of the court. That exercise of discretion must be independent and informed." B.E.S. Concrete, 93 B.R. at 236.

2 Members of Nossaman "have professional and social relationships with firms and professionals that may be involved" in the case; they "are or have been involved in educational, civic, or social activities with certain district court judges and bankruptcy judges in the Eastern District of California"; they "are or have been involved in educational or civic activities with" the UST and her office; and Nossaman partners, associates, and employees may: (a) have personal banking relationships with financial institutions that may have an interest in the case; (b) have ordinary customer relationships (e.g. telephone, cable, electricity or other utility contract) with, or purchase goods or services from, certain parties-in-interest in the case; and (c) invest in mutual funds, retirement funds, private equity funds and/or other types of investment funds that may invest in parties that have an interest in the case."

3 This is no mere formalism. The purpose of the amendment to the rule [a 1987 amendment to Rule 2014(a)] manifestly is one of disclosure and promotes public confidence in the integrity of the bankruptcy process and

the bar. It reflects a formal policy determination that disclosure must be factual rather than conclusory, and that mere assertions parroting the requirements of section 327(a) (disinterested person and no adverse interest) are insufficient. In order for the rule to work, professionals must voluntarily and in good faith comply by making the factual disclosures that are prerequisite to employment and compensation under the Bankruptcy Code. Thus, by way of example, if the trustee's son-in-law is to be employed in any professional capacity, such fact must be disclosed. The court will then decide whether the professional satisfies the statutory standards and should be employed.

In re Azevedo, 92 B.R. 910, 911 (Bankr. E.D. Cal. 1988).

4 **"Neither Nossaman nor Hughes Law Corporation shall submit an application for fees that includes time or expenses sought by the other firm through another fee application."**

36.	17-20731-D-11 TBG-1	CS360 TOWERS, LLC	MOTION TO EMPLOY STEPHAN M. BROWN AS ATTORNEY 2-15-17 [8]

Tentative ruling:

This is the debtor-in-possession's motion to employ The Bankruptcy Group, P.C. ("TBG"), as its counsel in this case. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concern. Counsel's supporting declaration raises doubts as to whether TBG is a disinterested person, as required by §§ 327(a) and 1107(a) of the Bankruptcy Code and within the meaning of § 101(14), and as to whether it represents an interest adverse to the bankruptcy estate, as prohibited by those sections.

It appears this bankruptcy case developed out of a dispute between Raymond E. Sahadeo, on the one hand, and Mark D. Chisick and/or Gemack Associates, L.P., on the other hand. Mark Chisick is the current manager of the debtor; Mr. Sahadeo, Gemack Associates, and the Chisick Family Trust are the current members. (Gemack Associates owns 60% of the debtor; Mr. Sahadeo and the Chisick Family Trust own 20% each.) In addition, Gemack Associates is scheduled as being owed $5.2 million by the debtor on an unsecured promissory note and Mr. Chisick is scheduled as being owed an unknown amount on account of a member loan. (There is a third general unsecured creditor, Manmohan S. Passi, on the debtor's Schedule E/F. His claim amount is listed as unknown.)

According to counsel's declaration, prior to the bankruptcy filing, TBG "uncovered fraudulent activities involving [the debtor's] former manager," Mr. Sahadeo, and represented the debtor "and a majority of its members [presumably, the Chisick Family Trust and Gemack Associates] in removing Sahadeo as a manager" of the debtor. Brown Decl., DN 10, at 2:26-3:1. TBG also filed a state court action against Sahadeo and others to recover rental income allegedly diverted from the debtor to Sahadeo. (Counsel does not state who the other defendants were, nor does Counsel state who the particular plaintiff is.) The debtor's statement of financial affairs references a lawsuit entitled Mark D. Chisick, et al. v. Raymond E. Sahadeo,

et al.; the court assumes this is the lawsuit mentioned in counsel's declaration.[1] Counsel states the debtor may remove that lawsuit to this court as it involves property of the estate. Presumably, although counsel does not say so, TBG continues to represent Mr. Chisick, his family trust, and Gemack Associates in the lawsuit, as well as the debtor.

Counsel adds that TBG "also discovered fraudulent activities involving Sahadeo which are unrelated to" the debtor. Brown Decl. at 3:5-6. Counsel does not indicate what those activities are or how TBG came to discover them if they are in fact unrelated to the debtor. In any event, TBG represents Mr. Chisick, the debtor's current manager and a creditor, and presumably a trustor of the Chisick Family Trust that is a 20% owner of the debtor, in a separate action against Mr. Sahadeo "to recover real estate that was fraudulently transferred to Sahadeo's father." Id. at 3:9-10. Counsel declares that action to be unrelated to the debtor. TBG also represents Gemack Associates, a 20% owner of the debtor and a creditor of the debtor for $5.2 million, "in recovering proceeds from a property tax sale, which is unrelated to" the debtor. Id. at 3:13-14.

A person who is disinterested "'is one that can make unbiased decisions, free from personal interest, in any matter pertaining to the debtor's estate.'" Shat v. Kistler (In re Shat), 2009 Bankr. LEXIS 4547 at *16, 2009 WL 7809004 at *6 (9th Cir. BAP Nov. 25, 2009), quoting First Interstate Bank, N.A. v. CIC Inv. Corp. (In re CIC Inv. Corp.), 192 B.R. 549, 553 (9th Cir. BAP 1996). "The purpose of the rule that counsel be disinterested is to assure undivided loyalty to the debtor." CIC Inv., 192 B.R. at 553-54.

> A generally accepted definition of "adverse interest" is the (1) possession or assertion of an economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession or assertion of an economic interest that would create either an actual or potential dispute in which the estate is a rival claimant; or (3) possession of a predisposition under circumstances that create a bias against the estate.

Dye v. Brown (In re AFI Holding, Inc.), 355 B.R. 139, 148-49 (9th Cir. BAP 2006) .

Without more specifics about the lawsuit and absent further concrete evidence and analysis, it appears that the concurrent representations described in counsel's declaration renders TBG not a disinterested person and likely mean TBG represents interests adverse to the estate. For example, assuming Mr. Sahadeo has limited assets, TBG would represent conflicting interests in pursuing and attempting to recover from those limited assets on behalf of the debtor, as well as Mr. Chisick and/or his family trust and the other plaintiffs TBG represents in Chisick v. Sahadeo, as well as on behalf of Mr. Chisick in the action against Mr. Sahadeo involving the transfer of property to Mr. Sahadeo's father.[2]

TBG will need to supplement the record to disclose additional information on those issues, and will also need to disclose what plaintiffs it represents in Chisick v. Sahadeo and who the defendants are in Gemack Associates' action concerning a property tax sale. Counsel's conclusion that the matters are unrelated to the debtor is not for him to draw; it is for the court to draw, following full and complete disclosure of the facts. Further, TBG has not disclosed anything about how much it was paid for its services in each of the pre-petition matters, when, by whom, and what amounts, if anything, are still owed and by whom. Payments by the debtor or insiders or creditors of the debtor or other parties-in-interest, as well as amounts still owed, are "connections" that must be disclosed in order for the

court to make the appropriate determination as to a professional's eligibility for employment. Finally, TBG will need to explain why the debtor's mailing address is the same as TBG's address, whether any sort of leasing arrangement exists, whether the debtor provides any consideration to TBG for collecting its mail, and other particulars of the arrangement.

The court will hear the matter.

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1 The statement of affairs lists another lawsuit – Brady & Vinding v. CS360 Tower, LLC and Guy Swanson – as pending, yet for an unknown reason, neither Brady & Vinding nor Guy Swanson is scheduled as a creditor.

2 The Code's definition of a disinterested person "is broad enough to include a [person] with some interest or relationship that would even faintly color the independence and impartial attitude required by the Code." See Dye v. Brown (In re AFI Holding), 530 F.3d 832, 838 (9th Cir. 11 2008).

37. 17-20731-D-11 CS360 TOWERS, LLC MOTION TO USE CASH COLLATERAL
TBG-2 2-15-17 [12]

Tentative ruling:

This is the motion of the debtor-in-possession for authority to use cash collateral. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following concerns regarding service of the motion.

First, the proof of service shows that, for California Capital Loans, Inc. Profit Sharing Plan, the post office box number, city, state, and zip code listed on Schedule D were dropped off, such that the moving papers could not have been served on that creditor, which, according to the motion, holds deeds of trust against more of the debtor's condominium units than any other secured creditor. Second, the suite number of the Sacramento County Assessor/Tax Collector is not the same as the one listed on Schedule D. Third, for the entity creditors, it is not clear they were served in accordance with Fed. R. Bankr. .P. 7004(b), as required by Fed. R. Bankr. P. 4001(b)(1)(A) and 9014(b).

The court will hear the matter.

38. 16-25239-D-7 DIVINDER HUNDAL — MOTION TO EMPLOY CHRISTOPHER D. HUGHES AS ATTORNEY
NOS-1 — 2-8-17 [98]

Tentative ruling:

This is the trustee's application to employ Nossaman LLP as the trustee's counsel in this case. The application was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns.

First, attorney Christopher Hughes ("Counsel") states in his supporting declaration that Nossaman reviewed a list of the parties involved in the case for purposes of determining whether it had any "connections" with them. However, Counsel answers that question with a statement that "the Conflicts Management System did not identify any actual or potential conflicts between the key parties and Nossaman's current clients." There are two problems with that statement. First, it is the role of the court, not the professional proposed to be employed, to determine whether actual or potential conflicts exist that might preclude employment. "The duty of professionals is to disclose all connections with the debtor, debtor-in-possession, insiders, creditors, and parties in interest . . . ." In re Park-Helena Corp., 63 F.3d 877, 882 (9th Cir. 1995) (emphasis added).[1] Second, the connections required to be disclosed are not limited to those with current clients; the professional must disclose connections with former clients, to the extent they can be discovered, and with a firm's partners, associates, and staff.

As far as clients are concerned, counsel discloses that Nossaman has represented a particular bank, which he names and which is identified in the debtor's schedules, in matters unrelated to the debtor or this bankruptcy case. However, as far as connections with the firm's partners, associates, and staff are concerned, counsel includes four statements of what appears to be boilerplate,[2] apparently tailored to satisfy the disclosure requirement in every case, concluding with the required language that, "except as set forth above," Nossaman has no connections with the debtor or the other parties described in Fed. R. Bankr. P. 2014(a). As discussed below boilerplate is not sufficient disclosure to satisfy the Rule.

The professional proposed to be employed must ensure that all connections between the parties described in the rule, on the one hand, and the firm's partners, associates, and staff, on the other hand, are disclosed. There "may be room for debate at the fringe about what 'connections' need be disclosed" (B.E.S. Concrete, 93 B.R. at 236), such as situations where a particular utility company is a creditor and everyone in the city gets its power from that utility. However, mere boilerplate that could be used in every case creates uncertainty as to whether Counsel engaged in the necessary steps to ascertain whether there exists connections that are required to be disclosed.[3] Here, there is no evidence the partners, associates, and staff of Nossaman have been made aware of the identities of the debtor, creditors, and other parties described in Rule 2014(a) and asked to disclose any connections. "The burden is on the person to be employed to come forward and make full, candid, and complete disclosure." B.E.S. Concrete, 93 B.R. at 237.

The court's second concern is with certain language in counsel's declaration that is based on the fact that Christopher Hughes previously represented the trustee earlier in the case, while he was an attorney with Hughes Law Corporation. Mr. Hughes states:

> **Although Nossaman is not seeking approval of fees at this time, since I was employed as counsel of record effective [date], at the appropriate time, Nossaman intends to submit an application to approve fees for professional services rendered and reimbursement of expenses incurred in the Bankruptcy Case incurred by me and/or Hughes Law Corporation while I was counsel of record for the Trustee, which includes services provided before and after I joined Nossaman.**

That sentence states literally that Nossaman intends to seek approval of fees for services performed by Mr. Hughes and/or by Hughes Law Corporation during a time before Mr. Hughes became associated with Nossaman. Counsel will need to explain why Nossaman's stated intention does not violate § 504(a) of the Code or clarify this statement. At first glance, the last sentence of the same paragraph [4] suggests that Nossaman and Hughes Law Corporation will not submit applications for the other's fees; however, that conclusion appears to conflict with Nossaman's intention as quoted above. In addition, on closer examination, it is possible the last sentence of the paragraph, concluding with the phrase "through another fee application," means only that Nossaman and Hughes Law Corporation will not submit applications for the same fees; that is, for duplicative fees. In short, counsel will need to confirm that Nossaman will not be submitting applications for fees for services performed by Christopher Hughes (or otherwise by Hughes Law Corporation) before Mr. Hughes became affiliated with Nossaman.

The court will hear the matter.

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1 **"It was [the professional's] duty to reveal all of his connections with the bankrupt, the creditor or any other parties in interest. Had he made the disclosures then it would have devolved upon the court to determine whether conflicts existed. General Order 44 [the Bankruptcy Act precursor to Rule 2014] does not give the attorney the right to withhold information because it is not apparent to him that there is a conflict." In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 236 (Bankr. E.D. Cal. 1988), quoting In re Haldeman Pipe & Supply Co., 417 F.2d 1302, 1304 (9th Cir. 1969). "The ultimate determination of whether there is a disqualifying conflict and whether the representation is in the best interest of the estate lies within the discretion of the court. That exercise of discretion must be independent and informed." B.E.S. Concrete, 93 B.R. at 236.**

2 **Members of Nossaman "have professional and social relationships with firms and professionals that may be involved" in the case; they "are or have been involved in educational, civic, or social activities with certain district court judges and bankruptcy judges in the Eastern District of California"; they "are or have been involved in educational or civic activities with" the UST and her office; and Nossaman partners, associates, and employees may: (a) have personal banking relationships with financial institutions that may have an interest in the case; (b) have ordinary customer relationships (e.g. telephone, cable, electricity or other utility contract) with, or purchase goods or services from, certain parties-in-interest in the case; and (c) invest in mutual funds, retirement funds, private equity funds and/or other types of investment funds that may invest in parties that have an interest in the case."**

3 **This is no mere formalism. The purpose of the amendment to the rule [a 1987 amendment to Rule 2014(a)] manifestly is one of disclosure and promotes public confidence in the integrity of the bankruptcy process and**

the bar. It reflects a formal policy determination that disclosure must be factual rather than conclusory, and that mere assertions parroting the requirements of section 327(a) (disinterested person and no adverse interest) are insufficient. In order for the rule to work, professionals must voluntarily and in good faith comply by making the factual disclosures that are prerequisite to employment and compensation under the Bankruptcy Code. Thus, by way of example, if the trustee's son-in-law is to be employed in any professional capacity, such fact must be disclosed. The court will then decide whether the professional satisfies the statutory standards and should be employed.

In re Azevedo, 92 B.R. 910, 911 (Bankr. E.D. Cal. 1988).

4 **"Neither Nossaman nor Hughes Law Corporation shall submit an application for fees that includes time or expenses sought by the other firm through another fee application."**

39. 16-25239-D-7 NOS-2 — DIVINDER HUNDAL — MOTION TO SUBSTITUTE ATTORNEY 2-8-17 [102]

Final ruling:

This is the trustee's application to substitute counsel, filed February 8, 2017. The same day, the court signed an order at the bottom of the application, by which the court approved the substitution. Accordingly, this matter is withdrawn from calendar.

40. 16-25239-D-7 NOS-3 — DIVINDER HUNDAL — MOTION TO EXTEND TIME 2-15-17 [109]

Tentative ruling:

This is the trustee's motion for an extension of time to object to the debtor's claim of exemptions in a 2014 Dodge Ram 3500 truck. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The debtor did not disclose the truck on her original schedules, filed with her petition on August 10, 2016. She did list it on an amended Schedule A/B filed September 21, 2016, at a value of $23,000, and she added Sierra Central Credit Union to her Schedule D as having a lien against the truck for $23,000. Apparently believing there was no equity in the truck, the debtor did not claim an exemption in it. On December 21, 2016, the trustee filed a motion to compel the debtor to turn over the truck and other assets of the recycling business operated by the debtor's spouse, apparently as a sole proprietorship. The debtor opposed the motion and filed a motion to compel the trustee to abandon the truck. She also, on January 18, 2017, filed an amended Schedule C on which she claimed an exemption of $8,000 in the truck as a tool of the trade and $4,000 under the wild-card exemption. By the present motion, the trustee seeks an extension of 60 days to object to those claims of exemption.

The trustee believes she has sufficient grounds to object to the exemption, but she does not indicate what they are. She states the debtor refinanced the truck with Sierra Cental Credit Union in the summer of 2016, shortly before filing this case, and that the debtor has failed to produce the documents related to the refinance despite the issuance of an order requiring their turnover. The documents the trustee seeks include the debtor's loan application, the amount paid by the Credit Union to pay off the prior loan, the Credit Union's response to the application, and "any appraisal or other assessment of value, et cetera." Trustee's Motion, DN 109, at 2:19-20. The trustee claims the testimony of the debtor's non-filing spouse at a Rule 2004 examination on February 14, 2017 "suggests that Debtor will not be able to satisfy one or more of the requirements necessary to claim one of the exemptions for the Truck . . . ." Id. at 2:25-27. The trustee also contends the documents concerning the refinance "may bolster at least one of the grounds" for her objection. Id. at 3:1-2. She requests this extension of time so she may subpoena the records from the Credit Union and a third-party who may have acted as an intermediary in the loan transaction.

The court appreciates the difficulty the trustee has obviously had in obtaining turnover of the truck and the refinance documents from the debtor. The debtor apparently misunderstood her duty "to surrender to the trustee all property of the estate and any recorded information . . . relating to property of the estate . . ." § 521(a)(4). The debtor apparently relied instead on § 542(a), which requires an entity in possession of property of the estate to turn it over to the trustee unless it is of inconsequential value or benefit to the estate. As far as property in the possession of the debtor is concerned, however, § 521(a)(4) governs and it requires the debtor to turn over the property even if, in her opinion, it has no value or benefit to the estate. "The debtor has no right to possess or control estate property while it remains property of the estate." Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi), 764 F.3d 1168, 1178 (9th Cir. 2014). The debtor's remedy is to file a motion to compel abandonment; she may not refuse to surrender the property pending the hearing based on her own assessment of its value to the estate.

However, the court has issued a tentative ruling on the debtor's motion to compel abandonment of the truck, also on this calendar, stating it intends to grant that motion on the basis that there is no equity in the truck. As a result, the debtor's claim of exemptions in the truck is no longer relevant and the court intends to deny this motion. This ruling should not be interpreted as having any effect on the court's February 2, 2017 order requiring the debtor to turn over a trailer and certain documents.

The court will hear the matter.

41. 16-22556-D-7 MGBEOJULIKWE OFFIAH AND WINIFRED OKEEM
ALAN NAKATSUKA VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-12-17 [70]

Tentative ruling:

This is the motion ostensibly of unsecured creditor Alan Nakatsuka for relief from the automatic stay to permit the continued prosecution of a pending state court action. The debtors have filed opposition.[1] For the following reasons, the motion will be granted with limitations.

> **What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, as well as prejudice to the parties and whether exclusively bankruptcy issues are involved.**

Kronemyer v. Am. Contrs. Indem. Co. (In re Kronemyer), 405 B.R. 915, 921 (9th Cir. BAP 2009) (citations omitted).

Alan Nakatsuka is deceased. The actual parties-in-interest, who will be referred to herein as the moving parties, are his widow and their two daughters. They are the plaintiffs in the state court action and also the plaintiffs in an adversary proceeding in this court to determine the debt based on their state court complaint to be nondischargeable pursuant to § 523(a)(2), (4) and (6). By their amended complaint in the state court action, the moving parties allege the decedent, Alan Nakatsuka, died while in the debtors' elder care facility as a result of injuries suffered at the hands of the debtors. The moving parties assert claims based on dependent abuse, under the California Welfare and Institutions Code, and wrongful death. The state court complaint also includes claims for dependent abuse, wrongful death, and misrepresentation against eight other defendants, including Sutter Health and Sutter Medical Center Foundation, as well as other care providers who had been responsible for Mr. Nakatsuka's care before he was admitted to the debtors' facility.

First, the court rejects the moving parties' contention that the debtors filed this case solely to evade the state court action. Although their schedules disclose an unusually small amount of general unsecured debt other than tax debt, just $4,760, it appears they have a sizeable amount of general unsecured tax debt to discharge. See Claim Nos. 1 and 2 on the court's claims register. However, the court agrees with the moving parties that granting relief from stay will promote efficiency and judicial economy, allow for relief to be afforded to the moving parties against the multiple defendants in a single forum – the state court, and avoid unnecessary duplication of effort and expense. The court further finds those interests outweigh any likely prejudice to the debtors from the granting of relief from stay. Thus, the court intends to grant the motion with a limitation on enforcement of any monetary judgment against the debtors pending a determination of nondischargeability by this court.

In opposition to the motion, the debtors begin with the proposition that the moving parties have not met their burden of making a prima facie showing of cause for relief from stay because the only "evidence" the moving parties have submitted

is their original unverified complaint in the state court action, whereas unverified complaints are not admissible evidence. However, the veracity of the allegations in the state court complaint is not among the factors the court is to consider on this motion.

Next, the debtors claim they cannot afford to litigate in state court and then return to this court to litigate the issue of dischargeability. They state they have no insurance that would cover their defense or potential liability. They claim their elder care facility "does not turn much of a profit" (Debtors' Opp., DN 76, at 7:12); that they are "essentially out of any further disposable funds altogether" (id. at 2:22); and that forcing them to litigate in state court and then return to this court would likely lead to their "total financial ruin." Id. at 8:7-8.[2] This argument overlooks the fact that if the stay is not lifted, the debtors will have to litigate the liability and damages issues, as well as the dischargeability issues, in this court, and they offer no basis on which to conclude they would be better able to afford to do that than to proceed on the liability and damages issues in the state court, with the possibility of having to return to this court to determine dischargeability.[3] Of course, if the debtors prevail in the state court action, they will not need to return to this court at all.

And if that does become necessary, the parties will almost certainly not need to re-litigate all the issues that have been determined in the state court action. While it is true that bankruptcy courts have exclusive jurisdiction to make determinations of dischargeability under § 523(a)(2), (4), and (6), it is simply not the case that other forums may not determine the underlying factual issues. In Lakhany v. Khan (In re Lakhany), 538 B.R. 555 (9th Cir. BAP 2015), a creditor filed an adversary complaint under § 523(a)(2), (4), and (6) and a motion for relief from stay to add the debtor as a defendant in a state court action the creditor had filed against other defendants before the chapter 7 case was filed. The creditor advised the bankruptcy court that after he had obtained a judgment in the state court action, he would file a motion for summary judgment in the adversary proceeding. The bankruptcy court granted relief from stay and the debtor appealed.

The Bankruptcy Appellate Panel rejected the debtor's contention that "the exclusive jurisdiction of the bankruptcy court to determine dischargeability somehow bars establishing the predicate facts for that determination in a state court (or, presumably, any other nonbankruptcy forum)." 538 B.R. at 560 (footnote omitted).

> This is a fundamental misunderstanding: bankruptcy courts regularly make non-dischargeability determinations, via issue preclusion, on facts determined elsewhere. For example, in Grogan v. Garner, the Supreme Court reversed a circuit court's reversal of a bankruptcy court's judgment of nondischargeability under § 523(a)(2) predicated on issue preclusion (using older terminology, "collateral estoppel") from a state court's fraud judgment, thereby upholding the bankruptcy court.

Id. The Lakhany panel then affirmed the bankruptcy court's decision. Id. at 563.

The debtors' argument also fails to balance the harm to them from having to find money to litigate against the benefits to be gained by the moving parties and the judicial system from permitting the moving parties to proceed in a single forum against all the alleged contributors to Mr. Nakatsuka's death. The debtors themselves acknowledge they are "front-and-center in the [state court] Litigation." Opp. at 8:12. "Movants' main focus is and always has been ascribing fault to Debtors" (id. at 8:13-14), and the primary factual allegations "clearly implicate

only Debtors in the death of decedent." Id. at 8:20. The court agrees – this is an accurate assessment of the moving parties' state court complaint. Although the complaint does include a wrongful death claim against the Sutter defendants based on "reckless neglect, abandonment and abuse," and although other defendants are charged with negligently, recklessly, and/or fraudulently referring Mr. Nakatsuka to the debtors' elder care facility, the fact remains that Mr. Nakatsuka died while he was a resident in the debtors' care home and the moving parties' allegations center on the debtors.

However, this works against the debtors' position on this motion. If the stay is not lifted, the moving parties will have to litigate the entirety of the core set of facts – the extent of the debtors' responsibility for Mr. Nakatsuka's death – in state court so as to reach the non-debtor defendants, and at the same time litigate the same set of facts; that is, the entirety of the liability and damages portions of the action as against the debtors, as well as the dischargeability issues, in this court. This dual-track procedure could also lead to inconsistent outcomes. And of course, if the debtors prevail in the state court, there will be no need for anyone to return to this court.

The debtors next contend the factual allegations in the state court action "do not whatsoever touch on any issues of fraud/misrepresentation, nor on fraud or defalcation while acting in a fiduciary capacity" (Opp. at 6:15-16) and that the wrongful death and elder abuse causes of action do not "declare whether or not the underlying conduct was willful or malicious as required to prove 11 USC 523(a)(6) nondischargeability." Id. at 6:21-22. The debtors' citations to state and federal court cases support the conclusion that the standards applicable to a wrongful death claim differ from those of a § 523(a)(6) claim. However, in this case, the allegations of the state court complaint, if proven, are so serious they would likely support a § 523(a)(6) cause of action. As to § 523(a)(2) and (4) (and (6)), the debtors have not thus far sought to dismiss those claims for failure to state a claim, and their analysis of those subsections in connection with this motion is vague at best. The court is making no findings on any of the nondischargeability causes of action, and the preclusive effect of a state court judgment, if any, will depend on the specific findings of fact and conclusions of law reached in the state court action.

Although the state court action will likely proceed more slowly than would this court, that is not a reason to burden two different courts with trials over the same set of facts, with the resulting duplication of effort and expense. The core set of facts raises issues of state law, not bankruptcy law, which the state court is as well equipped to handle as this court and likely better.[4] The interests of both judicial economy and minimizing delay and expense to the parties are best served by having the moving parties' claims, except the determination of dischargeability, tried in a single court. The presence of non-debtor defendants and the predominantly state law nature of the claims counsels in favor of allowing the state court action to proceed first. The court acknowledges that the state court action is not very far along – the debtors claim the amended complaint has not yet been served on the non-debtor defendants. Again, however, although a state court action nearing trial is more likely to warrant relief from stay, the fact that the action has recently begun does not, in the court's view, outweigh the benefits of permitting the parties to proceed there to determine the liability and damages issues as to all the defendants.

Finally, the debtors claim they have already provided the moving parties with all of their documentary evidence, have fully disclosed their financial condition,

and have been deposed. They are now willing to consent to relief from stay to allow the state court action to proceed as to the other defendants and to allow the moving parties "to make use of the full panoply of discovery rights and demands with respect to Movants and any other named defendant in the Litigation under the California Code of Civil Procedure (depositions, document requests, interrogatories, medical record review, subpoenas, etc.)." Danielson Decl., attached to Opp., at 14:1-4. The court is not entirely sure what this offer means, but in any event, it does not weigh heavily in the balance.

For the reasons stated, the court will grant the parties relief from stay to proceed to judgment in the state court and will stay this adversary proceeding, with the parties to return to this court for a determination of the dischargeability issues in the event the moving parties obtain a monetary award in the state court or some other award that would fall within the scope of a chapter 7 discharge. Enforcement of any state court judgment as against the debtors will be left to this court.

The court will hear the matter.

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1 The debtors' opposition was signed and filed by their attorney of record in the moving parties' pending adversary proceeding, discussed below. Because he is not their attorney of record in this bankruptcy case, he was not the appropriate attorney to file their opposition to this motion. See LBR 2017-1(a)(1) and (b)(1). However, in the interest of expediency, the court has considered the opposition.

2 The debtors have omitted from their opposition certain facts about their financial circumstances. According to their Schedules I and J, the debtors' income from the care home is <$115> per month not including the $616 they pay on a second mortgage on that home. Without that mortgage payment and without the net loss from the care home, the debtors' monthly net income after expenses would be $571 per month. They have listed two daughters, ages 26 and 28, as dependents who, however, contribute nothing to the household income, yet the debtors are able to afford a mortgage payment of $3,053 per month. The joint debtor is a registered nurse employed by Sutter Medical Foundation, where she has worked for 10 years, currently making $12,746 per month gross. The court is by no means suggesting the debtors can afford an extended period of litigation, merely pointing out that although the financial picture painted by their schedules is not especially encouraging, it is also not as bleak as the debtors would have the court believe.

3 The debtors' attorney testifies, "Debtors are practically penniless to the point where our office is now advancing fees to defend the adversary proceeding. Our office will not be able to represent Debtors in the state court wrongful death action given the above-mentioned insolvency and the substantial minimum of anticipated fees to be incurred in defending said action." Danielson Decl., attached to Opp., at 12:21-24. It is difficult to see how litigating the liability and damages issues in this court will be significantly less costly than litigating the same issues in state court.

4 Personal injury tort and wrongful death claims are non-core proceedings. 28 U.S.C. § 157(b)(2)(B) and (O). Thus, if the automatic stay were not lifted to allow the case to proceed in the state court, this court would likely abstain from trying the adversary proceeding, as such claims are to be tried in the

district court rather than the bankruptcy court. 28 U.S.C. § 157((b)(5). Although § 157(b)(5) is not jurisdictional (Stern v. Marshall, 564 U.S. 462, 479 (2011)), the bankruptcy courts rarely, if ever, conduct trials in wrongful death cases. (To be clear, § 157(b)(5) does not mandate trial in the federal district court as opposed to the state court; it merely designates the appropriate venue as between the federal district court and the bankruptcy court. See Kayle v. Lake Balboa Health Care, Inc., 2015 U.S. Dist. LEXIS 63629, *3-6 (C.D. Cal. 2015) (remanding wrongful death claim to state court); Hopkins v. Plant Insulation Co., 349 B.R. 805, 813-14 (N.D. Cal. 2006) (same).)

42.	16-21659-D-7 NOS-1	TRONG NGUYEN	MOTION TO EMPLOY CHRISTOPHER D. HUGHES AS ATTORNEY 2-8-17 [99]

Tentative ruling:

This is the trustee's application to employ Nossaman LLP as the trustee's counsel in this case. The application was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns.

First, attorney Christopher Hughes ("Counsel") states in his supporting declaration that Nossaman reviewed a list of the parties involved in the case for purposes of determining whether it had any "connections" with them. However, Counsel answers that question with a statement that "the Conflicts Management System did not identify any actual or potential conflicts between the key parties and Nossaman's current clients." There are two problems with that statement. First, it is the role of the court, not the professional proposed to be employed, to determine whether actual or potential conflicts exist that might preclude employment. "The duty of professionals is to disclose all connections with the debtor, debtor-in-possession, insiders, creditors, and parties in interest . . . ." In re Park-Helena Corp., 63 F.3d 877, 882 (9th Cir. 1995) (emphasis added).[1] Second, the connections required to be disclosed are not limited to those with current clients; the professional must disclose connections with former clients, to the extent they can be discovered, and with a firm's partners, associates, and staff.

As far as clients are concerned, counsel discloses that Nossaman has represented a particular bank, which he names and which is identified in the debtor's schedules, in matters unrelated to the debtor or this bankruptcy case. However, as far as connections with the firm's partners, associates, and staff are concerned, counsel includes four statements of what appears to be boilerplate,[2] apparently tailored to satisfy the disclosure requirement in every case, concluding with the required language that, "except as set forth above," Nossaman has no connections with the debtor or the other parties described in Fed. R. Bankr. P. 2014(a). As discussed below boilerplate is not sufficient disclosure to satisfy the Rule.

The professional proposed to be employed must ensure that all connections between the parties described in the rule, on the one hand, and the firm's partners, associates, and staff, on the other hand, are disclosed. There "may be room for debate at the fringe about what 'connections' need be disclosed" (B.E.S. Concrete, 93 B.R. at 236), such as situations where a particular utility company is a creditor and everyone in the city gets its power from that utility. However, mere boilerplate that could be used in every case creates uncertainty as to whether

Counsel engaged in the necessary steps to ascertain whether there exists connections that are required to be disclosed.[3] Here, there is no evidence the partners, associates, and staff of Nossaman have been made aware of the identities of the debtor, creditors, and other parties described in Rule 2014(a) and asked to disclose any connections. "The burden is on the person to be employed to come forward and make full, candid, and complete disclosure." B.E.S. Concrete, 93 B.R. at 237.

The court's second concern is with certain language in counsel's declaration that is based on the fact that Christopher Hughes previously represented the trustee earlier in the case, while he was an attorney with Hughes Law Corporation. Mr. Hughes states:

> Although Nossaman is not seeking approval of fees at this time, since I was employed as counsel of record effective [date], at the appropriate time, Nossaman intends to submit an application to approve fees for professional services rendered and reimbursement of expenses incurred in the Bankruptcy Case incurred by me and/or Hughes Law Corporation while I was counsel of record for the Trustee, which includes services provided before and after I joined Nossaman.

That sentence states literally that Nossaman intends to seek approval of fees for services performed by Mr. Hughes and/or by Hughes Law Corporation during a time before Mr. Hughes became associated with Nossaman. Counsel will need to explain why Nossaman's stated intention does not violate § 504(a) of the Code or clarify this statement. At first glance, the last sentence of the same paragraph [4] suggests that Nossaman and Hughes Law Corporation will not submit applications for the other's fees; however, that conclusion appears to conflict with Nossaman's intention as quoted above. In addition, on closer examination, it is possible the last sentence of the paragraph, concluding with the phrase "through another fee application," means only that Nossaman and Hughes Law Corporation will not submit applications for the same fees; that is, for duplicative fees. In short, counsel will need to confirm that Nossaman will not be submitting applications for fees for services performed by Christopher Hughes (or otherwise by Hughes Law Corporation) before Mr. Hughes became affiliated with Nossaman.

The court will hear the matter.

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1 "It was [the professional's] duty to reveal all of his connections with the bankrupt, the creditor or any other parties in interest. Had he made the disclosures then it would have devolved upon the court to determine whether conflicts existed. General Order 44 [the Bankruptcy Act precursor to Rule 2014] does not give the attorney the right to withhold information because it is not apparent to him that there is a conflict." In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 236 (Bankr. E.D. Cal. 1988), quoting In re Haldeman Pipe & Supply Co., 417 F.2d 1302, 1304 (9th Cir. 1969). "The ultimate determination of whether there is a disqualifying conflict and whether the representation is in the best interest of the estate lies within the discretion of the court. That exercise of discretion must be independent and informed." B.E.S. Concrete, 93 B.R. at 236.

2 Members of Nossaman "have professional and social relationships with firms and professionals that may be involved" in the case; they "are or have been involved in educational, civic, or social activities with certain district court judges and bankruptcy judges in the Eastern District of California"; they

"are or have been involved in educational or civic activities with" the UST and her office; and Nossaman partners, associates, and employees may: (a) have personal banking relationships with financial institutions that may have an interest in the case; (b) have ordinary customer relationships (e.g. telephone, cable, electricity or other utility contract) with, or purchase goods or services from, certain parties-in-interest in the case; and (c) invest in mutual funds, retirement funds, private equity funds and/or other types of investment funds that may invest in parties that have an interest in the case."

3 This is no mere formalism. The purpose of the amendment to the rule [a 1987 amendment to Rule 2014(a)] manifestly is one of disclosure and promotes public confidence in the integrity of the bankruptcy process and the bar. It reflects a formal policy determination that disclosure must be factual rather than conclusory, and that mere assertions parroting the requirements of section 327(a) (disinterested person and no adverse interest) are insufficient. In order for the rule to work, professionals must voluntarily and in good faith comply by making the factual disclosures that are prerequisite to employment and compensation under the Bankruptcy Code. Thus, by way of example, if the trustee's son-in-law is to be employed in any professional capacity, such fact must be disclosed. The court will then decide whether the professional satisfies the statutory standards and should be employed.

In re Azevedo, 92 B.R. 910, 911 (Bankr. E.D. Cal. 1988).

4 "Neither Nossaman nor Hughes Law Corporation shall submit an application for fees that includes time or expenses sought by the other firm through another fee application."

43.	17-20468-D-7	JUAN/GISELA VARGAS	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 2-8-17 [11]

Final ruling:

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

44.	16-27176-D-7 RLG-1	MARK DACAR	MOTION TO EXTEND TIME 2-14-17 [14]

45. 17-20689-D-11 ET-1 — MONUMENT SECURITY, INC. — MOTION TO USE CASH COLLATERAL 2-2-17 [10]

46. 17-20689-D-11 ET-3 — MONUMENT SECURITY, INC. — MOTION TO EMPLOY MATTHEW R. EASON AS ATTORNEY 2-13-17 [42]

47. 17-20689-D-11 ET-6 — MONUMENT SECURITY, INC. — MOTION TO LIMIT NOTICE AND ESTABLISH NOTICE PROCEDURES 2-14-17 [46]

Tentative ruling:

This is the debtor-in-possession's motion for an order limiting notice of matters covered by Fed. R. Bankr. P. 2002(a)(2), (3), and (6) to the United States Trustee, the debtor and the debtor's attorney, all secured creditors, the official committee of unsecured creditors, or if no committee is appointed, the 20 largest unsecured creditors, and all parties who have properly served on the debtor and its attorney a request for special notice. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. The court, however, has a preliminary concern.

The motion was served only on the United States Trustee, secured creditors, and the 20 largest unsecured creditors; that is, only on those parties who will continue to receive Rule 2002(a)(2), (3), and (6) notices. Further, the motion is silent as to any intention on the part of the debtor to serve all creditors with notice of the outcome of the motion. Thus, the debtor has not notified and does not propose to notify those creditors proposed to be excluded from future Rule 2002(a)(2), (3), and (6) notices that unless they request special notice, they will not be served. That is, excluded creditors will have no way of knowing that if they want to receive future notices, they will need to request special notice.

The debtor's counsel must be prepared to submit at the hearing a proposed order granting the motion, with an attached exhibit consisting of a notice the debtor will be required to serve on all creditors by a date certain advising them that if they wish to receive future notice of matters covered by Fed. R. Bankr. P. 2002(a)(2),

(3), and (6), they need only file a request for special notice with the court, listing the name and address at which they wish to be served, and cautioning them that if they do not file a request for special notice, they will not receive such notices. The court will not require creditors who wish to request special notice to "properly serve" their requests "upon the Debtor and its attorneys," as requested by the debtor.

The court will hear the matter.

48.	15-29890-D-7 MF-1	GRAIL SEMICONDUCTOR	MOTION BY IAIN A. MACDONALD TO WITHDRAW AS ATTORNEY 2-14-17 [569]
49.	15-29890-D-7 16-2088 CARELLO V. STERN ET AL	GRAIL SEMICONDUCTOR MF-2	MOTION BY IAIN A. MACDONALD TO WITHDRAW AS ATTORNEY 2-14-17 [226]
50.	15-29890-D-7 16-2088 CARELLO V. STERN ET AL	GRAIL SEMICONDUCTOR DNL-6	CONTINUED MOTION FOR CONTEMPT 1-18-17 [180]

51. 15-29890-D-7 GRAIL SEMICONDUCTOR CONTINUED MOTION TO COMPEL
16-2088 DNL-5 1-12-17 [175]
CARELLO V. STERN ET AL

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the chapter 7 case in which this adversary proceeding is pending (the "trustee"), to compel defendants Donald Stern; Billion Hope International, Ltd.; and MOM OS, LLC (collectively for purposes of this ruling, the "defendants") to provide answers to interrogatories. The defendants have not filed opposition. The trustee initially failed to submit sufficient evidence as to her efforts to meet and confer under the standards enunciated by this court in Sanchez v. Wash. Mutual Bank (In re Sanchez), 2008 Bankr. LEXIS 4239, *2-5 (Bankr. E.D. Cal. 2008), and the hearing was continued to permit the trustee to supplement the record, which she has now done.

The court is not persuaded, however, that counsel's supplemental declaration sufficiently demonstrates that he in good faith met and conferred or attempted to meet and confer with the defendants' counsel. The declaration lists by date a series of emails between the two counsel, with a very brief description of each. The declaration evidences only one actual conversation between the two, by telephone, which was "about the interrogatory responses, the injunction and matters relating to settlement." Cunningham Supp. Decl., DN 230, ¶ 5. The declaration refers to parts of the defendants' counsel's email messages, including the statements that he was working on getting the responses but that "Stern is [in] Asia and communication is not as fast as either of us would like" (id. ¶ 8) and that counsel "may be getting something presently." Id. ¶ 10.

As discussed in Sanchez, the rule "requires a party to have had or attempted to have had an actual meeting or conference." Sanchez, 2008 Bankr. LEXIS 4239, at *4, quoting Shuffle Master v. Progressive Games, 170 F.R.D. 166, 171 (D. Nev. 1996). Here, there is evidence of a single actual discussion and virtually no details about its contents. The declaration does not "accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute" (Sanchez, at 2-3, quoting Shuffle Master, at 170) and does not demonstrate that they "engage[d] in meaningful negotiations or otherwise provide[d] legal support for their position" (Sanchez, at *4, quoting Shuffle Master at 172), as required. Thus, the court is unable to conclude that the trustee's counsel "personally engage[d] in two-way communication with the nonresponding party to meaningfully discuss each contested discovery dispute in a genuine effort to avoid judicial intervention." Sanchez, at *8, quoting Shuffle Master, at 171. Further, there is no evidence of a discussion to the effect that if answers were not produced, the trustee would file a motion to compel.

For the reasons stated, the court intends to deny the motion. The court will hear the matter.

52. 17-20290-D-7 URIAH/MARY-ANN VOLINSKY
KKY-1
SAN FRANCISCO FIRE CREDIT
UNION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-13-17 [14]

53. 17-20290-D-7 URIAH/MARY-ANN VOLINSKY
KKY-2
SAN FRANCISCO FIRE CREDIT
UNION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-13-17 [25]

54. 17-20290-D-7 URIAH/MARY-ANN VOLINSKY
KKY-3
SAN FRANCISCO FIRE CREDIT
UNION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-13-17 [36]