UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 19, 2014 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.	13-34701-D-7 HCS-1	WILLIAM/HELEN SLINGLAND	MOTION TO EMPLOY AND MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S), FEES: $3,250.00, EXPENSES: $0.00 2-19-14 [23]

Final ruling:

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

2. 13-33704-D-7 APN-1 TOYOTA MOTOR CREDIT CORPORATION VS.

MENETTE DARLING

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-7-14 [18]

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 The debtor received her discharge on February 5, 2014 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor 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.

3. 13-24507-D-11 UST-2

DKW PRECISION MACHINING INC.

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
2-7-14 [77]

4. 13-34517-D-7 GMW-2

EDWARD/LISA LIZARRAGO

MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA, NATIONAL BANKING ASSOCIATION
2-18-14 [22]

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.

5. 10-47422-D-7 12-2118 FARRAR V. LEXINGTON CONSULTING, INC. ET AL

DENNIS/SHERYL LANCASTER HSM-2

MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR PARTIAL SUMMARY ADJUDICATION
2-14-14 [74]

Final ruling:

The hearing on this motion has been continued by stipulated order to May 14, 2014 at 10:00 a.m. No appearance is necessary.

6. 14-20523-D-7 PENNY HOLT
RCO-1
GREEN TREE SERVICING, LLC
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-14 [10]

Final ruling:

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

7. 13-35327-D-12 LAURA BRANDON

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

Tentative ruling:

This is a third continued status conference in this chapter 12 case. Although several of the service defects previously noted in the case have been resolved, another has arisen that will need to be resolved before the court will conclude the status conference.

On February 26, 2014, as required by the court in an earlier ruling, the debtor's counsel served a notice of continued status conference, the court's scheduling order, and the debtor's status report on certain parties required to be served who had not previously been served. On March 5, 2014, the debtor filed amended schedules, adding one creditor at two addresses to her Schedule D, three creditors to her Schedule F, and two to her Schedule G. On March 5, 2014, the debtor's counsel served copies of the amended schedules on the newly-added creditors; however, except for two of them who were already on the master address list, the other newly-added creditors (Arlene Reyes, the USDA Rural Development, the United States Attorney for Rural Development, Chris and Rhea Newell, and Manuel Guzman) have never been served with notice of the case or notice of the deadline to file claims (or with notice of the status conference or with the debtor's status report). Further, although the debtor's counsel did serve those newly-added creditors with the motion to confirm a chapter 12 plan, filed March 5, 2014, the debtor has never amended the master address list to include those creditors; thus,

notices sent in the future by the Bankruptcy Noticing Center will not be served on those creditors.

The court will hear the matter as scheduled on March 19, 2014. However, the court also intends to continue the status conference yet again; the debtor will be required to file a notice of continued hearing and to serve it, together with a copy of the Scheduling Order and the debtor's status report, on the newly-added creditors. The debtor will also be required to file an amended master address list to include those creditors, and to serve them with the Notice of Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines.

The court will hear the matter.

8.	09-41430-D-7 DNL-11	VICKI KENNEDY	MOTION FOR COMPENSATION FOR GONZALES AND SISTO, LLP, ACCOUNTANT(S), FEES: $2,314.00, EXPENSES: $5.80 2-19-14 [211]

Final ruling:

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

9.	13-29030-D-7	WILLIAM/JANET CHENG	MOTION TO SET ASIDE 1-24-14 [210]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the debtors' motion (1) to set aside what they refer to as "the 1-22-2014 minute order;" (2) for a stay pending the trustee's turning over of certain "crucial evidences;" and (3) to compel the trustee to turn over "his dismissal of [the debtors'] bankruptcy." The trustee has filed opposition, and on March 7, 2014, the debtors filed what they called a supplemental motion to vacate, DN 279 (the "supplemental motion"), along with three exhibits.[1] For the following reasons, the motion will be denied.

First, the court did not issue a minute order on January 22, 2014. The only document filed that day was the civil minutes, including the court's final ruling, on the debtors' motion for a stay pending appeal. By that motion, the debtors had sought a stay pending appeal of the court's order authorizing the trustee to employ a real estate broker. On January 25, 2014, the court issued a minute order denying the motion. The debtors' supplemental motion remedies the defect in the original motion by referring not only to the "1-22-2014 minute Order" (the minutes) but also

to the "1-25-2014 ORDER," requesting it be set aside. The supplemental motion also adds (1) a request for a stay pending the debtors' motion to the Bankruptcy Appellate Panel for a stay pending appeal, dated March 5, 2014;[2] (2) a request that the court vacate its original order authorizing the trustee to employ a real estate broker, dated January 11, 2014; and (3) a request that the court vacate and set aside orders allegedly entered on five other dates. Those five orders are not described, and that request will not be further considered. As to the other forms of relief, and the relief requested in the original motion, the debtors have presented no valid grounds for the court to set aside or reconsider its January 22, 2014 ruling, its January 25, 2014 minute order denying the motion for a stay pending appeal, or its January 11, 2014 order granting the trustee's motion to employ a real estate broker.

The real crux of the debtors' original motion was the debtors' wish to compel the trustee to turn over to the debtors and the court certain "crucial evidences;" namely, (1) a document the trustee apparently asked them to sign at the initial meeting of creditors verifying that they had received no pre- or post-petition financial counseling and that they had received no legal or professional assistance in filling out their bankruptcy documents; and (2) a document whereby the trustee, according to the debtors, dismissed or reaffirmed the dismissal of this bankruptcy case. The court will reiterate here what it has observed in rulings on earlier motions – (1) that it was not within the trustee's power to dismiss this bankruptcy case, and he did not do so; and (2) that it is not a requirement that a debtor who chooses to represent himself or herself in bankruptcy, such as the debtors in this case, have legal or professional assistance in doing so or in preparing the documents filed in the case. Thus, even if the debtors signed a statement that they received no such assistance, the statement would have no bearing on the case, or at any rate, on the issues that have been raised thus far in the case.[3]

Accordingly, as the documents the debtors seek to compel the trustee to turn over either do not exist (the trustee's dismissal of the case or his reaffirmation of the dismissal of the case) or would prove nothing of significance (the statement the debtors apparently signed attesting that they received no legal or professional assistance in filling out their bankruptcy paperwork), the court will not order the trustee to produce them, and will not issue a stay pending his turning them over. The debtors' remaining arguments in the original motion have no bearing on the outcome of the motion.

The debtors filed three exhibits with their supplemental motion: (1) an Equifax report dated February 24, 2014 addressed to J.D. Cheng (presumably joint debtor Janet Cheng); (2) an Equifax report of the same date addressed to William W. Cheng (the debtor); and (3) a purported letter from someone named David Pucilowski (undated) to Janet Cheng concerning the debtors' property at 623 16th Street, Sacramento (which is the property the trustee has employed a broker to market), and stating "Do you want to keep your property? If you want to keep it we can help you." The two Equifax reports purport to be responses to "your reinvestigation request"; each report states, with respect to this bankruptcy case, "This bankruptcy is currently reporting as voluntry [sic] discharge chapter 7." The debtors state they did not make any request to Equifax to investigate or reinvestigate, and they did not have access to a computer or the Internet and did not know Equifax is a credit reporting agency. From the language in the Equifax reports quoted above, the debtors conclude that "[t]he voluntary discharge of Chengs Chapter 7 bankruptcy was submitted by Trustee Richards to Equifax Credit Agency." Supplemental Motion, filed March 7, 2014 ("Supp. Mot."), at 2:11-13. Further, they claim, "Trustee Richards Dismissed Chengs Bankruptcy with his request to Equifax to discharge Chengs Chapter

7 bankruptcy." Id. at 3:24-25.

The debtors have confused the term "discharge" with the concept of "dismissal" of a bankruptcy case. They are not the same thing. The court can only speculate as to the meaning Equifax intended the term "voluntary discharge chapter 7" to have, but in the court's view, it appears to be an awkward way of saying that a voluntary petition was filed by the debtors and that a bankruptcy discharge might be entered in the case. The term should not be taken to imply that the case has been dismissed (or that a discharge has been entered). In particular, as it pertains to the debtors' case, the quoted language does not mean the case has been dismissed - it has not, as the court has stated repeatedly in its rulings on various motions.

The debtors cite the Pucilowski letter as "informing the Trustee broker Ken Turton is with the fraudulent offer with the fraudulent value of Chengs motel in less than 2 day now." Supp. Mot., at 3:20-22. First, the letter is hearsay, and cannot be considered as evidence of anything. But even if it were presented in admissible form, the letter says nothing about fraud and nothing about the trustee's broker, and would prove nothing relevant to the motion.

Finally, the debtors argue their due process rights were violated because they were not at the January 22, 2014 hearing on their motion for a stay pending appeal of the court's order authorizing the trustee to employ a real estate broker. The reason they were not present is that the court had determined a hearing would not be helpful and was not necessary, and had issued a final ruling; thus, no hearing was held. Nothing in the motion or the supplemental motion persuades the court that a hearing would have altered the outcome. The debtors also complain they were not served by the court with notice of the January 25, 2014 order denying the motion. The court cannot determine why notice of the order was not served, but in any event, the debtors were not harmed - they filed the present motion to vacate or set aside the January 22, 2014 ruling before the minute order was even issued.

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

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1 Under ordinary circumstances, the court would not consider the supplemental motion or the exhibits, as they were filed less than two weeks before the hearing, whereas the court's local rule requires that authority for and evidence in support of a motion be filed with the motion. LBR 9014-1(d)(5) and (6). However, the court will consider the supplemental motion and exhibits at this time so as to save the parties from having to address the newly-raised issues in a later motion.

2 There is no indication in the record that a motion has been filed with the Bankruptcy Appellate Panel.

3 As for the statement the debtors allegedly signed to the effect that they received no pre- or post-petition financial counseling, the court notes that the debtors filed with the petition commencing this case two certificates of counseling, evidencing that each of them received the required credit counseling within the 180 days prior to the filing.

10. 13-29030-D-7 HCS-2 — WILLIAM/JANET CHENG — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
2-12-14 [232]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the trustee's motion to extend the deadline to file a complaint objecting to the debtors' discharge for an additional 180 days, to and including August 11, 2014. (The deadline was previously extended for 120 days, from October 15, 2013 to February 12, 2014.) For the following reasons, the motion will be granted.

The motion describes in detail the debtors' failure to disclose their assets, the trustee's discovery of undisclosed assets, the debtors' complete failure to comply with the court's order requiring them to amend their schedules, the granting of the trustee's motion to authorize him to obtain the debtors' credit reports (which the trustee has not yet received from the credit reporting agencies), the debtors' failure to attend many continued sessions of the meeting of creditors, including their failure to comply with the court's order to do so, and their failure to provide documents requested by the trustee and ordered by the court to be produced.

The motion adds that, in the meantime, the trustee has listed the debtors' motel property for sale, and has received several offers. The trustee expects to file a motion to sell the motel, which may well generate sufficient funds to pay off the secured claims on the motel, all unsecured claims filed to date, and all administrative claims in this case, which may render a complaint to deny the debtors' discharge unnecessary. On the other hand, the trustee still does not know whether the debtors have other creditors they have not scheduled.

The debtors oppose the motion on what the court has come to recognize as the usual grounds – that the trustee dismissed this bankruptcy case in August of 2013, that the court has failed in the past to provide a court-appointed interpreter for the debtors, that the debtors were not present at hearings on earlier motions, and that earlier rulings of the court have violated the debtors' due process rights, civil rights, Fourth Amendment rights, and privacy rights. These arguments have been addressed and rejected in prior rulings on other motions, and need not be further addressed here. The debtors have also added a few new grounds. The first of these – that William Cheng did not read the documents he signed – actually works against the debtors, and supports the extension of the trustee's deadline to object to their discharge. The second – that the trustee dismissed the debtors' bankruptcy documents – does not make sense. The third – that the trustee has an intrinsic motive to schedule more meetings of creditors, as he gets paid for each – is incorrect. The fourth – that the trustee did not get the debtors' approval to request their credit reports – is unavailing because the trustee did not need to get the debtors' approval. The rest of the debtors' arguments – that the trustee made a litigation mistake that caused the debtors huge financial damages, that he wrongfully altered the debtors' schedules, that he wrongfully and fraudulently altered the value of their motel property, that he fraudulently claimed the motel property had a particular value, and that he fraudulently entered into a contract with his real estate broker – are completely without foundation.

The court concludes that the trustee's grounds for the motion are well taken, and the debtors' objections are unavailing. Accordingly, the motion will be granted. The moving party is to submit an appropriate order. No appearance is necessary.

11.	13-29030-D-7 HCS-3	WILLIAM/JANET CHENG	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH FIRST AMERICAN SPECIALTY INSURANCE COMPANY 2-19-14 [245]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the trustee's motion for approval of his compromise with First American Specialty Insurance Company ("FASIC"). The debtors have filed opposition. No other party-in-interest has opposed the motion, and the deadline to file opposition has passed. For the following reasons, the motion will be granted.

By way of the compromise, the trustee seeks to settle a state court lawsuit filed by the debtors against FASIC, Sacramento County Superior Court Case No. 34-2012-00126113 (the "lawsuit"), in which the debtors alleged that FASIC breached a contract with them when it failed to pay on an insurance claim resulting from vandalism of the debtors' property at 9123 Linda Rio Dr., Sacramento. Under the compromise, FASIC will pay the bankruptcy estate $7,500, and the trustee will not seek any further relief against FASIC on account of the state court complaint. In their amended complaint in the lawsuit, the debtors prayed for an award of $58,000 as the value of the items stolen, including a central heating and air conditioning system, a built-in stove, an exhaust system, faucets, carpeting, and closet doors, plus punitive damages.

The motion is supported by the declaration of the trustee's counsel, stating he has investigated the lawsuit, reviewed the pleadings, and spoken with FASIC's counsel, who, in addition to describing the evidence uncovered to date (see below), told him FASIC had filed a motion for terminating sanctions for the debtors' failure to comply with a discovery order, a motion that is now pending for April 23, 2014. The trustee has analyzed the compromise in light of the applicable factors set forth in In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988); the court concludes, with the trustee, that the compromise is fair and equitable. The first factor – the probability of success in the litigation – weighs heavily in favor of the compromise. First, there is a risk the state court would dismiss the action as a terminating sanction against the debtors. FASIC has filed three motions to compel discovery responses; each one was granted, and the court imposed monetary sanctions.

Further, the evidence accumulated thus far supports the conclusion that the property had been vacant for more than 60 days prior to the date of the vandalism. The relevant pages of the insurance policy, filed as an exhibit, show that the policy specifically excluded coverage for vandalism if the dwelling was vacant for more than 60 consecutive days immediately before the loss. (A copy of the policy has also been filed by the debtors.) The trustee cites a petition the debtors filed with the Bankruptcy Appellate Panel on January 16, 2014 in which they stated they have lived at their property on 16th Street in Sacramento for more than 24 years. (The vandalism occurred in 2011.) FASIC has told the trustee's counsel that,

despite its multiple requests that the debtors provide evidence that they or anyone else was living at the property at the time of the loss or within 60 days before it, the debtors have failed to provide any credible evidence.

According to FASIC's counsel, debtor Janet Cheng has claimed that although she lived at the motel property on 16th Street, she stayed at the Linda Rio Drive property on occasion. FASIC's counsel, however, describes significant indications that the property had long been vacant, including the debtors' failure to produce any evidence of utilities at the property, a statement of an individual claiming to be the debtors' property manager that no one resided in the property, evidence of prior nuisance complaints about the property, and evidence that a sheriff's deputy had entered the property and found standing water in the bathroom and bedroom and mold on the walls. In their opposition to this motion, the debtors have not suggested they dispute any of this evidence. In short, the probability of success factor weighs in favor of the compromise.

As to the second of the Woodson factors, the trustee has not investigated the ability of FASIC to satisfy a judgment; thus, there is no indication the collectibility factor weighs either for or against the compromise.

The third factor – the likely expense, inconvenience, and delay of continuing to litigate – weighs in favor of the compromise. The debtors have failed to respond to FASIC's discovery requests or, apparently, to the state court's discovery orders, and have failed to cooperate with the trustee. As their cooperation would be essential to the trustee's success in the litigation, it is difficult to see how the trustee could gather the necessary evidence in any quick and cost-effective way, if at all.

Finally, as the compromise would result in a prompt payment to the estate, without further expense, and given the evidence in favor of FASIC's position and the debtors' failure to produce countervailing evidence, either to FASIC or the trustee, the compromise clearly appears to be in the best interest of the creditors, none of whom, the court notes, has opposed the motion. Thus, the fourth factor – the paramount interest of creditors – weighs in favor of the compromise, and the court concludes that the compromise was negotiated in good faith and is reasonable, fair and equitable.

The debtors raise several points in their opposition. (They have also raised other issues pertaining to the trustee's conduct regarding the debtors' motel property on 16th Street in Sacramento. Those issues have nothing to do with this motion, and thus, will not be further addressed.) The debtors begin by claiming the motion is "unauthorized," "highly illegal," and "incomprehensible." Debtors' Opposition, filed March 3, 2014 ("Opp."), at 1:15-18. First, the debtors claim the trustee has wrongfully described the insurance policy as a homeowner's policy when it is really a rental property policy. The policy does not contain a title defining it as one or the other, although it does provide that in certain circumstances, it covers the fair rental value of that part of the property rented to others. It appears to make no difference to the motion whether the policy is a homeowner's policy or a rental property policy, as the policy clearly excludes coverage if the property was vacant during the 60 days prior to the loss. Thus, the trustee's description of the policy, one way or the other, is irrelevant.

Next, the debtors complain that the settlement agreement between the trustee and FASIC was "signed without any date," and that the debtors were not informed of the settlement. The absence of dates with the signatures does not affect the

validity of the agreement, and in any event, the agreement becomes effective only after it is approved by the court. Further, the debtors were not entitled to notice of the settlement any earlier than the time they received the present motion.

The debtors' next argument is more substantial, but seriously inaccurate. They claim the trustee may not settle a claim concerning their Linda Rio Drive property "that was not listed and not any part of Chengs schedule[s]." Opp. at 4:5-6. The argument represents a misunderstanding of the nature of property of a bankruptcy estate, which includes all legal or equitable interests of the debtor in property as of the commencement of the case (§ 541(a)(1) of the Bankruptcy Code), whether scheduled or not.[1] The argument is really an attempt by the debtors to use to their own advantage their violation of the duty of careful, complete, and accurate reporting in their schedules,[2] which the court obviously cannot condone. The debtors' argument that the trustee has fraudulently altered their schedules that "did not have the Linda Rio drive property" (Opp. at 2:10-11), so as to "get the settlement proceeds" (id. at 2:11), fails for the same reasons.

Next, the debtors claim that (1) in addition to the $58,000 in actual damages, they are entitled to three years' worth of the fair rental value of the property, at $20,487 per year; (2) the rental value cannot fully compensate them for more than three years' worth of property tax and mortgage payments on the property, which is not habitable due to FASIC's breach of the insurance policy; (3) FASIC has maliciously for more than three years pursued a wrongful discovery process;[3] and (4) the state court ruled that FASIC's motion for terminating sanctions is "void" as having been "totally wrongfully applied to Chengs property rental policy." Opp. at 3:12-13. All of these points are conclusory and unsupported by any evidence. They do nothing to dissuade the court from the conclusion that the compromise is fair and equitable, under the Woodson factors.[4]

Finally, the debtors again raise the contention that the trustee dismissed their bankruptcy case in August 2013 at the initial session of the meeting of creditors. The court will reiterate here what it has observed in rulings on earlier motions – that it was not within the trustee's power to dismiss this bankruptcy case, and he did not do so.

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

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1 Samson v. Western Capital Partners, LLC (In re Blixseth), 684 F.3d 865, 871 (9th Cir. 2012).

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

3 The suggestion is that the discovery pursued by FASIC was wrongful because it pertained to a homeowner's policy, whereas the debtors' policy was a rental property policy.

4 "Rather than an exhaustive investigation or a mini-trial on the merits, the bankruptcy court need only find that the settlement was negotiated in good faith and is reasonable, fair and equitable." Spirtos v. Ray (In re Spirtos), 2006 Bankr. LEXIS 4894 at *32 (9th Cir. BAP 2006). The court's "proper role is 'to canvas the issues and see whether the settlement falls below the lowest point in the range of

reasonableness.'" Id., quoting In re Pacific Gas & Elec. Co., 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004).

12.	14-20632-D-7 VVF-1 HONDA LEASE TRUST VS.	JERRY KING AND LORNA GONZALEZ	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 2-12-14 [20]

Final ruling:

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

13.	13-23439-D-7 BHS-2	JUST/VICKIE WILLIS	MOTION FOR TURNOVER OF PROPERTY 2-6-14 [51]

Tentative ruling:

This is the trustee's motion to compel the debtors to turn over certain property of the estate. The debtors have filed a response. For the following reasons, the court intends to grant the motion, at least in part.

The trustee seeks to compel the debtors to turn over the following assets of the estate or their cash equivalent: (1) $25,014.71 in cash; (2) a 1984 Elkem motor home; (3) a 2000 Chrysler Town & Country; (4) a 1970 Valco S14 boat; (5) a 1998 CMT trailer; and (6) a 1990 Achilles boat. The trustee testifies that, despite demands by the trustee and his attorney, the debtors have not turned over any of these non-exempt assets of the estate.

The debtors' response is confusing. They begin by stating: "Trustee has requested a turnover from debtors in the amount of $25,014.71. The debtor's [sic] are agreeable to paying this amount including turning over certain personal property that represents part of this total amount. Paying the amount in full would compromise the Debtors[']financial stability." Debtors' Response, filed March 4, 2014 ("Resp."), at ¶ 1. The debtors have apparently misunderstood the motion. The trustee seeks turnover of cash in the amount of $25,014.71 plus the itemized vehicles and boats; that is, the vehicles and boats do not "represent part of this

total amount." [1] The debtors' response makes no further mention of the vehicles or boats; thus, the court will order the debtors to turn over to the trustee (1) the 1984 Elkem motor home; (2) the 2000 Chrysler Town & Country; (3) the 1970 Valco S14 boat; (4) the 1998 CMT trailer; and (5) the 1990 Achilles boat.

The debtors' response states that their home and an outbuilding on the property are essential for the continued operation of their business, but they propose to give the trustee a note for $25,014.71 secured by a deed of trust against the property. The note would carry interest at 5%, would require a monthly payment of $500, and would be all due and payable in five years. The debtors claim there is more than enough equity in the property to fully secure the note. The court will hear from the trustee as to this proposal, but in any event, the debtors will be ordered to turn over the motor home, the Town & Country, the boats, and the trailer. The court notes that the debtors have a 2010 Hyundai Santa Fe they claim is worth $14,325, and that they chose to sell a 1985 Chevrolet Corvette post-petition without the trustee's knowledge or court approval. Any contention that the Town & Country, motor home, boats, or trailer are necessary for the operation of their business or otherwise will likely not be well received.

The court will hear the matter.

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1 The amount of cash, $25,041.71, is comprised of the following: (a) $13,539.48 – funds remaining from the debtors' pre-petition sale of certain real property, which the debtors deposited into their business checking account but did not disclose on their schedules, and which they subsequently disbursed post-petition; (b) $9,983 – funds the debtors received as income tax refunds from 2012; (c) $30 – cash on hand at filing; (d) $932.23 – cash in bank accounts at filing; and (e) $530 – a security deposit.

14.	12-38243-D-7 HSM-2	MARY O'NEAL	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP FOR HOWARD S. NEVINS, TRUSTEE'S ATTORNEY(S), FEES: $7,249.50, EXPENSES: $11.25 2-14-14 [62]

15. 13-25947-D-7 KIETH/DAGNY MERRILL
RCO-1
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
2-10-14 [35]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed, the trustee has filed a statement of non-opposition, and the relief requested in the motion is supported by the record. The debtors received their discharge on October 11, 2013 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.

16. 14-20347-D-7 KYLE REID
EAT-1
JPMORGAN CHASE BANK, N.A.
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-18-14 [10]

Final ruling:

This matter is resolved without oral argument. This is JPMorgan Chase Bank, N.A. 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.

17. 14-21357-D-7 DALE/DARLENE SHIRLEY

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
2-13-14 [5]

18. 14-20758-D-7 JONATHAN HUNT
JHW-1
TD AUTO FINANCE, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-12-14 [9]

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.

19. 13-26559-D-7 BRIAN MCGLONE
SL-1

MOTION TO AVOID LIEN OF IBERIA BANK
2-13-14 [17]

Final ruling:

This is the debtor's motion to avoid an alleged judicial lien held by Iberiabank (the "Bank"). The motion will be denied for the following reasons. First, the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank by certified mail to the attention of an agent for service, whereas the rule requires that service on an FDIC-insured institution, such as the Bank, to the attention of an officer, and only an officer. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process. See Fed. R. Bankr. P. 7004(b)(3). If service on an FDIC-insured institution to the attention of an agent for service were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.[1]

Second, the motion is not supported by evidence sufficient to establish its factual allegations and to demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6). Further, the motion does not contain sufficient factual allegations to allow the court to determine whether to grant the motion or to allow the Bank to determine whether to oppose it. The motion states that it is brought pursuant to § 522(f)(1)(B) of the Bankruptcy Code. That subdivision provides for the avoiding of nonpossessory, nonpurchase-money security interests in household goods, tools of the trade, and health aids, whereas the lien in question here, if it is actually a lien against property of the debtor (see discussion below), is a judicial lien, not a nonpossessory, nonpurchase-money lien.

Further, the motion does not contain any information that would allow the court to determine whether the alleged lien impairs an exemption to which the debtor is entitled, as required by § 522(f)(1)(A) (or to allow the Bank to determine whether to oppose the motion). The moving papers do not indicate or evidence the debtor's opinion of the value of the property, the amounts of other liens on the property, or the amount of the debtor's claim of exemption in the property. (In fact, the motion does not even state that the debtor has claimed an exemption in the property.) The motion merely states the conclusion that "this lien impairs this property and the administration of the estate." Motion to Avoid Lien, filed Feb. 13, 2014 ("Mot."), at 2:10-12. This conclusion is really without meaning, as there is no provision in the Bankruptcy Code for the avoiding of a lien that "impairs" property generally or that impairs the administration of the estate.

Next, there is no evidence the Bank actually has a lien on the debtor's property that is subject to avoidance pursuant to § 522(f)(1)(A). The motion indicates that the Bank filed (recorded) with the Sacramento County Recorder's office a judgment issued by a Florida state court; a copy of the Florida court's judgment is filed as an exhibit, along with a cover page appearing to indicate that the judgment was actually recorded in Sacramento County. The problem is that there is no indication in the moving papers, or otherwise in the record in this case, that the Bank followed the proper procedure for enforcement of a sister-state judgment in California.

> Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the even-handed control of forum law. See McElmoyle ex rel. Bailey v. Cohen, 13 Peters 312, 325 (1839) (judgment may be enforced only as "laws [of enforcing forum] may permit"); see also Restatement (Second) of Conflict of Laws § 99 (1969) ("The local law of the forum determines the methods by which a judgment of another state is enforced.").

Baker v. GMC, 522 U.S. 222, 235 (1998).

> There is no right to extraterritorial execution on a judgment; i.e., the levying officer of the state of rendition cannot seize property in another state, and the other state will not issue a writ of execution on the foreign judgment. Hence, an action on the foreign judgment, to obtain a new domestic judgment on which execution may issue, is essential to its enforcement.

8 Witkin, Cal. Proc. 4th, § 414 (1997).

Thus, "recordation of a sister-state judgment cannot directly give rise to a judgment lien on real property located in California – a sister-state money judgment must first be reduced to a California judgment." Kahn v. Berman, 198 Cal. App. 3d 1499, 1505 (1988). Recordation in a California county of the judgment of a court of a state other than California, before complying with California law on sister-state judgments "[has] no effect." Id.; see also Cal. Code Civ. Proc. § 697.310(a) ["Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder."] and § 680.230 ["'Judgment' means a judgment, order, or decree entered in a court of this state."] (emphasis added).

The procedure for obtaining a California judgment on a judgment of a court of another state is set forth in Cal. Code Civ. Proc. §§ 1710.10 - 1710.65; it requires

the filing in a California court of an application for entry of a sister-state judgment. The application must be signed under oath and must include a number of statements, including a statement that the action in this state is not barred by the applicable statute of limitations, that there is no stay of enforcement in effect in the sister state, and so on. See Cal. Code Civ. Proc. § 1710.15(b). Once the sister-state judgment is entered, the judgment creditor must serve notice thereof on the judgment debtor in the manner provided by California law for service of a summons and complaint (§ 1710.30(a)), and the notice must inform the debtor that he or she has 30 days to make a motion to vacate the judgment. Id. In the present case, there is no indication the Bank took the appropriate steps to domesticate its Florida judgment in California. Thus, the Bank's recordation of a copy of the Florida judgment, albeit a certified copy, did not have the effect of creating a judgment lien on the debtor's property.[2]

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added). As the debtor has failed to demonstrate that the Bank holds a judicial lien, the motion will be denied.

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

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1 Counsel should note for future reference that it is also a good idea, although not sufficient in itself, to serve the attorneys who obtained the judgment. See All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 92- 94 (9th Cir. BAP 2007) (Klein, J., concurring).

2 Although not requested by the debtor to do so, the court has taken judicial notice of the Bank's proof of claim filed in this case, which does not include any documents demonstrating that the Bank obtained a sister-state judgment from a California court. The debtor appears to recognize this dilemma – the motion states: "The said lien was never attached or perfected. No sister state judgment has ever been obtained by Century [the Bank's predecessor in interest] nor was an abstract of judgment ever filed." Mot. at 2:1-3.

20. 09-29162-D-11 SK FOODS, L.P. MOTION TO AMEND AND/OR MOTION
09-2543 TJD-8 FOR RELIEF FROM JUDGMENT
SHARP ET AL V. CSSS, LP 2-5-14 [672]

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

Tentative ruling:

This is the motion of Larry Lichtenegger and Gerard Rose (collectively, the "moving parties") to alter or amend the court's judgment against them filed January 25, 2014, DN 671 (the "Judgment"), and for relief from the Judgment, pursuant to Fed. R. Civ. P. 59 and 60, respectively (incorporated herein by Fed. R. Bankr. P. 9023 and 9024). In particular, the moving parties request that in lieu of the Judgment, they be given an opportunity to arrange for the return of a piece of equipment known as the Drum Line to California within 90 days from the date of the order on the motion. The judgment creditor, the Bank of Montreal, as Administrative Agent ("BMO"), has filed opposition. For the following reasons, the motion will be denied.

As a preliminary matter, BMO contends that because the moving parties have filed a notice of appeal from the Judgment, this court has been divested of jurisdiction to consider the motion. The court believes the matter is covered instead by Fed. R. Bankr. P. 8002(b), the last paragraph of which states: "A notice of appeal filed after announcement or entry of the judgment, order, or decree but before disposition of any of the above motions [including a motion under Fed. R. Bankr. P. 9023 or 9024] is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding."[1] Thus, the court will consider the merits of the motion.

A Rule 59(e) motion "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). "[A] motion for reconsideration is not permitted (a) to assert new legal theories that could just as well have been raised before the initial hearing; (b) to present new facts which could have been presented before the initial hearing; or (c) to rehash the same arguments made the first time or simply express an opinion that the court was wrong." In re Greco, 113 B.R. 658, 664 (D. Hawaii 1990).

Although Rule 60(b) should be liberally applied to accomplish justice, Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.), 503 F.3d 933, 941 (9th Cir. 2007), at the same time, it should be "used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." Id. (citations omitted, internal quotation marks omitted).

The Judgment is against the moving parties jointly and severally, in the amount of $350,000. The Judgment was issued as a sanction for contempt for the moving parties' failure to take all steps reasonably necessary to prevent the Drum Line from being shipped out of the country in violation of this court's temporary restraining order. The court based the amount of the Judgment on its conclusion as to the value of the Drum Line at the time it was shipped, in August of 2009. The moving parties contend the Drum Line was not worth $350,000 when it was shipped. BMO's response is directly on point – the moving parties have submitted no new evidence and have merely discussed certain evidence that was already in the record that they had either not discussed or not emphasized in their oppositions to the motion that resulted in the Judgment. In other words, the present motion is nothing more than a second bite at the apple.

As indicated, the court based the amount of the Judgment on the value of the

Drum Line at the time it was shipped; that is, at the time of the conduct the court found to be in contempt of the restraining order. The court based its determination of that value on the price at which Rose, acting for CVS, agreed the Drum Line would be sold to SK Foods, in December of 2008. The moving parties make three arguments. First, they claim the $350,000 is the value placed on the Drum Line in a sale at a time when the Drum Line was "fully operational,"[2] whereas when the Drum Line left California in August of 2009, it was "in very poor shape" and had been dismantled and possibly "cannibalized." Id. at 2:20-24, quoting deposition testimony of Richard Dean Emmett, BMO's Ex. 1, BMO 000048.[3] [4] Mr. Emmett's testimony was part of the record on the motion that resulted in the Judgment; neither Rose nor Lichtenegger addressed it in his briefing, and the court did not address it in its ruling.

Addressing that testimony now, the court finds it does not support the moving parties' position. Mr. Emmett testified about an e-mail he had written in early August of 2009, stating "it would be phenomenal if Ken could guide this project" (BMO 000048), referring to the project of refurbishing the Drum Line and to Ken Gifford, in New Zealand, to whom the Drum Line was shipped. Mr. Emmett testified the refurbishment of this type of equipment was not within his expertise (BMO 000049-50); that he had never been involved in the operation of the Drum Line (BMO 000074); that he did not have an opinion as to the value of the Drum Line when it was in operation (BMO 000091); and that his only knowledge of what the Drum Line may have been worth in August of 2009 was from a conversation with Ken Gifford, who told Mr. Emmett the Drum Line was worth about $500,000 (BMO 000091-92). In short, Mr. Emmett's testimony serves only to support the amount of the Judgment, not to discredit it.

Next, the moving parties cite an e-mail from Ken Gifford dated November 29, 2009 (after the Drum Line had been received in New Zealand), in which he opined that the cost to restore the Drum Line and make it operational would be about $400,000, and that "[t]he machinery complete in restored order made operational would sell for USD $1,500,000 as a used/reconditioned production line." BMO 000348. Again, this merely undercuts the moving parties' position.

The moving parties further contend the sale relied on by the court – by CVS to SK Foods, in December of 2008 – included not only the Drum Line but the entire business of CVS. The agreement between CVS and SK Foods governing the sale supports the contrary conclusion – that the $350,000 represented the agreed value of the Drum Line and only the Drum Line. The parties' Purchase and Sale Agreement, dated December 1, 2008 (the "Agreement") defined the assets being sold as "(a) All tangible personal property, furnishings, fixtures, equipment, machinery, parts, accessories, and any other property currently used (or available for use) by [CVS] in the operation of the Business [earlier defined as CVS's commercial drum barrel manufacturing business] (the "Personal Property"); (b) All inventory of the Business as of the Closing Date (the "Inventory"); (c) All other goodwill of [CVS] related to the Business." BMO 000699. The sale expressly did not include accounts receivable and cash on hand. The parties agreed to allocate the purchase price among the assets being sold "as set forth in Exhibit 3.3" to the Agreement (BMO 000700), but Exhibit 3.3 to the Agreement listed no assets except the equipment comprising the Drum Line, and contained no allocation of the purchase price among the components. In other words, no portion of the purchase price was allocated to anything other than the Drum Line.[5]

Finally, the moving parties cite no authority for the extraordinary proposition that individuals held to have been in contempt of a court's restraining order for

failing to take all steps reasonably necessary to prevent an asset from leaving the country should be able to purge their contempt over four years later by either selling the asset in place (in this case, in New Zealand) or transporting it back to California and returning it to the creditor who obtained the contempt order.

For the reasons stated, the court concludes that the moving parties have failed to present newly discovered evidence, to show that the court committed clear error, or to show that there has been an intervening change in the controlling law, and have failed to make any other showing that the Judgment should be altered or amended or that the moving parties should be relieved from the Judgment. Accordingly, the motion will be denied.

The court will hear the matter.

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1 See Moldo v. Ash (In re Thomas), 428 F.3d 1266, 1269 (9th Cir. 2005), quoting Fed. R. Bankr. P. 8002(b), advisory committee notes (1994 Amend.) ["[a] notice [of appeal] filed before the filing of one of the specified motions or after the filing of a motion but before disposition of the motion is, in effect, suspended until the motion is disposed of, whereupon, the previously filed notice effectively places jurisdiction in the district court or bankruptcy appellate panel")].

2 Motion to Amend Judgment, filed Feb. 4, 2014 ("Mot."), at 2:11.

3 All exhibit references are to BMO's exhibits in support of the motion that resulted in the Judgment, DC No. TJD-8.

4 The moving parties have cited no evidence for the proposition that the Drum Line was fully operational in December of 2008, when CVS sold it to SK Foods.

5 The court notes also that Rose himself testified that by the time the trustee sued CVS over the Drum Line (August 21, 2009), CVS had been forced out of business by the United States Trustee, and he understood it to have no officers, directors, or employees. There is no evidence whatsoever that CVS had any ongoing business, any goodwill value, or any assets other than the Drum Line at the time the Drum Line was shipped or at the time the parties signed the Agreement, in December of 2008.

21.	09-29162-D-11 11-2337 SHARP V. SSC&L 2007 TRUST ET AL	SK FOODS, L.P. SH-11	MOTION TO VACATE SUPPLEMENTAL ORDER RE MOTION FOR STAY OF PARTIAL JUDGMENT PENDING APPEAL 2-19-14 [623]

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

22. 14-20470-D-7 BARBARA HOWDEN
VC-1
IDAHO HOUSING AND FINANCE ASSOCIATION VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-12-14 [9]

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 she 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.

23. 13-35671-D-11 CARLYLE STATION LLC

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

This matter will not be called before 11:00 a.m.

24. 13-35671-D-11 CARLYLE STATION LLC
SJK-1
BAND OF COMMERCE VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-14 [30]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the continued hearing on the motion of Heritage Bank of Commerce (the "Bank") for relief from stay (the "Motion") pertaining to the real property commonly described as 11820 Eagle Lakes Road, Soda Springs, California (the "Property").1 The Bank asserts that there is no equity in the Property and that the Property is not necessary for an effective reorganization. In addition, the Bank asserts its interest in the Property is not adequately protected, and accordingly, relief from stay is required under Bankruptcy Code ("Code") §§ 362(d)(2) and (d)(1). The initial hearing was held pursuant to Local Bankruptcy Rule 9014(f)(2) and at that hearing the court set a briefing schedule.

The briefing schedule required the debtor's opposition to the Motion be filed

and served no later than March 5, 2014. The debtor did not timely file opposition to the Motion. On the contrary, the debtor filed its opposition on March 7, 2014 (the "Late-Filed Opposition") without explaining its untimeliness. The Late-Filed Opposition asserts: (1) that the debtor's bankruptcy case was filed in good faith and the case is not a single asset real estate case [2]; (2) that the Bank is not undersecured and the Property is necessary for an effective reorganization; and (3) cause does not exist for granting relief from stay under § 362(d)(1). The Late-Filed Opposition also spends a significant amount of time arguing, in a very confusing way, that the Bank has made misrepresentations in regard to its loan to the debtor, and that the Bank is, in fact, an unsecured creditor.

The Late-Filed Opposition being filed on March 7, 2014, left the Bank only two business-days to file its reply. Notwithstanding this abbreviated period, on March 11, 2014 the Bank timely filed a reply, along with the Declaration of Attorney Steven J. Kottmeier and the Reply Declaration of Raul Garcia (the "Garcia Reply Declaration") (the "Reply"). The Reply asserts (1) that the debtor's Late-Filed Opposition should not be considered because it was not timely filed; (2) that the schedules filed by the debtor in this case admit that the Bank is the holder of the note that is secured by the Property; (3) that the Bank is entitled to relief from stay under § 362(d)(2) because the debtor has not met its burden and established that the Property is necessary for an effective reorganization; and (4) that the Bank is entitled to relief from stay for cause under § 362(d)(1).

As the debtor's Late-Filed Opposition was not timely filed, it will be stricken and not considered. However, even if the court was to consider the Late-Filed Opposition, it would not change the outcome of this Motion for the reasons stated below.

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

Section 362(d) requires the court to grant relief from stay when there is cause, including a lack of adequate protection (§ 362(d)(1)); or, when there is no equity in a property and the property is not necessary for an effective reorganization (§ 362(d)(2)). The standards for stay relief under § 362(d)(1) and (d)(2) are independent and alternative. Can-Alta Props., Ltd. V. States Sav. Mortg. Co. (In re Can-Alta Props., Ltd.), 87 B.R. 89,90 (9th Cir. BAP 1988). Section 362(d)(2) provides that "the court shall grant relief from the stay . . . if - (A) the debtor does not have any equity in such property; and (B) such property is not necessary to an effective reorganization." 11 U.S.C. § 362(d)(2) (emphasis added). Equity, for purposes of § 362(d)(2)(A), is the difference between the value of the property and all the encumbrances on it. Sun Valley Newspapers, Inc. V. Sun World Corp. (In re Sun Valley Newspapers, Inc.), 171 B.R. 71, 75 (9th Cir. BAP 1994) (citing Stewart v. Gurley, 745 F.2d 1194, 1196 (9th Cir. 1984).

Section 362(g) provides that the party opposing relief from the stay has the burden of proof on all issues other than the debtor's equity in a property. Thus, once a movant establishes that a debtor has no equity in a property, "it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization." United Sav. Ass'n of Tex. V. Timbers of Inwood Forest

Assocs., Ltd., 484 U.S. 365, 375 (1988). Under the standard set by the Supreme Court in Timbers, to establish that property is necessary for an effective reorganization under § 362(d)(2)(B), a debtor is required to show that "the property is essential for an effective reorganization that is in prospect . . . This means a reasonable possibility of a successful reorganization within a reasonable time." 484 U.S. at 376 (internal quotations omitted); In re Dev., Inc., 36 B.R. 998, 1005 (Bankr. D. Haw. 1984) (cited with approval by Timbers). "While it is true that a relief from stay hearing should not be converted into a confirmation hearing, the effective reorganization requirement . . . requires a showing by the debtor . . . that a proposed or contemplated plan is not patently unconfirmable and has a realistic chance of being confirmed." Sun Valley Newspaper, Inc. v. Sunworld Corp. 171 B.R. (9th Cir. BAP 1994).

The Late-Filed Opposition asserts that the Bank is not the true holder of the underlying note and related deed of trust; this argument is disjointed and confusing at best. The debtor also appears to argue that because the SBA has guaranteed a portion of the underlying note, the Bank is fully secured for the purpose of Code § 362(d)(2).[3] The court finds that these two arguments are inconsistent, and that both of these arguments are without merit.[4] The initial declaration of Raul Garcia, along with the accompanying exhibits, filed by the Bank in support of the Motion, coupled with the Garcia Reply Declaration, establish that the Bank is the payee under the underlying note and that the note is secured by a deed of trust on the Property. As such, the Bank has clearly made a colorable showing it is the proper party to seek relief from stay. Further, as the Reply correctly notes, the debtor's schedules, filed under penalty of perjury, indicate that the Bank is the holder of the first position deed of trust on the Property and lists the Bank's secured claim at $1,200,000. And, the Bank's claim is not listed as contingent, unliquidated, or disputed. In light of the foregoing, the debtor is estopped from arguing to the contrary. Thus, the court finds the Bank's claim is secured by the Property, and that the Bank clearly has standing to seek relief from stay.

The debtor has listed the Property on its Schedule A with a value of $450,000, and lists the total debt on the Property in excess of $1,350,000. As such, according to the debtor's own schedules there is no equity in the Property for the purpose of Code § 362(d)(2)(A). As there is no equity in the Property for the purpose of Code § 362(d)(2), it is the debtor's burden to demonstrate by a preponderance of the evidence that the Property is necessary for an effective reorganization. The only evidence the debtor has submitted in regards to whether the Property is necessary for an effective reorganization is the declaration of Michael Rogers, the debtor's managing member. The Rogers declaration fails to address this issue in any meaningful way. No plan of reorganization has been filed, nor has the debtor even suggested a basic structure for a feasible plan. The Late-Filed Opposition and the Rogers declaration do nothing more than make conclusory statements and parrot the statutory requirement that the Property is necessary for an effective reorganization. These conclusory statements are made without any analytical support. Simply put, the debtor has provided no specifics or evidence from which the court could conclude that there is an effective reorganization in prospect within a reasonable time.

In addition, the Reply raises a number of major confirmation hurdles to any plan that the debtor may propose. These include: (1) the debtor has failed to demonstrate an impaired claim will vote to accept a plan; (2) the debtor has failed to establish how it will satisfy Code § 1129(b)(2)(B) over the Bank's objection; and (3) the debtor has failed to present any evidence that a plan is feasible. Of particular note is the feasibility issue. The Late-Filed Opposition does not

provide a forecast or any other information regarding the future revenues necessary to fund a plan. This is a particularly important because the debtor concedes that historically it has been unprofitable.

Moreover, in addition to the feasibility issues, the object facts in this case present significant hurdles to confirming a plan. There is a real issue as to whether the debtor can separately classify the Bank's deficiency claim for voting purposes. Any such separate classification may well be the "gerrymandering" of votes for the sole purpose of creating an accepting class. If the Bank's claim can not be separately classified, it appears that the Bank would control the class of general unsecured claims and the debtor would not have an impaired class to accept the plan, thus preventing confirmation under Code § 1129(a)(10). However, even if the Bank's claim could be separately classified, the debtor has not suggested how a plan can be confirmed, over the Bank's objection, under Code § 1129(b)(2)(B). In summary, the debtor has offered no meaningful evidence to support a finding that there is a reasonable prospect for a successful reorganization withing a reasonable time. Thus, the debtor has not met its burden in demonstrating that the Property is necessary for an effective reorganization.

As the court has found there is no equity in the Property and the debtor has failed to establish the Property is necessary for an effective reorganization, the court will grant relief from stay under Code § 362(d)(2). The court will hear the matter.

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1 The Property is comprised of approximately 160 acres, upon which the debtor operates a commercial campground and various related business activities.

2 Although the Late-Filed Opposition spends a fair amount of time explaining why the debtor's case does not fall within the definition of a single-asset real estate case, the Bank's Reply concedes that the Motion does not seek relief under § 362(d)(3). As relief under § 362(d)(3) was not requested in the Motion, the court will not consider relief under that subsection.

3 The debtor filed exhibits with its Late-Filed Opposition which purports to be communications between the SBA and the debtor and literature regarding certain programs administered by the SBA. The court will not consider these exhibits even if they had been timely filed as they are without any foundation or authentication, they are hearsay, and the exhibits are not relevant to a determination of the Motion.

4 Although the debtor argues that the Bank is not the true holder of the note and that the SBA Guarantee somehow "creates" equity in the Property, the Reply correctly rebuts both of these contentions and the court adopts the Bank's argument on these points.

25.	13-35671-D-11 TMP-2	CARLYLE STATION LLC	CONTINUED MOTION TO USE CASH COLLATERAL O.S.T. 1-27-14 [26]

This matter will not be called before 11:00 a.m.

26.	13-33875-D-7 EBD-1	KANG PROPERTY, INC.	MOTION TO COMPEL ABANDONMENT 2-21-14 [33]

27.	12-39878-D-7 DRE-3	DAVID/RENEE SMITH	CONTINUED MOTION TO AVOID LIEN OF GRANITE COMMUNITY BANK, N.A., PREMIERWEST BANK, CALMAT CO. AND COLONIAL PACIFIC LEASING CORPORATION 8-23-13 [100]

Tentative ruling:

This is a continued hearing on the debtors' motion to avoid the judicial liens of America West Bank ("AWB") and Tri Counties Bank ("TCB") (the "Motion"). The debtors filed their Chapter 7 case on November 12, 2012 and the Motion was filed some ten months latter on August 23, 2013. The initial hearing on the Motion was held on October 2, 2013 and AWB and TCB disputed, and the parties continue to dispute, the priority of their respective liens. The initial hearing was continued to allow supplemental briefing. Following the supplemental briefing the court concluded that the parties' lien priority dispute would need to be resolved through an adversary proceeding in accordance with Fed. R. Bankr. Proc. 7001; however, the court advised the parties that it would proceed with valuing the debtors' property to determine the extent that either, or both, of the parties' liens impair the debtors' homestead exemption under Bankruptcy Code ("Code") § 522(f). To that end, this continued hearing is for the purpose of having the court establish the value of the debtors' residence at 5621 Freeman Drive, Rocklin, California (the "Property"), and thus, determine to what extent TCB's and AWB's liens impair the debtors' homestead exemption, and are thus, avoidable.

The evidentiary record has closed and the debtors' only evidence for the value of the Property is their declaration filed August 23, 2013 wherein both debtors state as follows: "We are familiar with property values in our area as a result of

market resales and we believe our property's fair market value at the time of filing our bankruptcy was $330,000." TCB, on the otherhand, has submitted the declaration and appraisal by real estate appraiser, David Dutra, filed on September 17, 2013, who testifies that in his opinion the value of the Property as of the appraisal date (September 8, 2013) is $420,000. The Dutra appraisal attaches as an exhibit a Standard Form Residential Appraisal Report containing five comparable sales along with a comparable sales analysis typically included in such an appraisal report.

A homeowner may testify to his or her opinion of the value of his or her property. 2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.). However, as against the testimony of an individual with professional experience as a real estate appraiser, the court gives significantly more weight to the opinion of the appraiser. Thus, in this case, the court accords significantly more weight to Mr. Dutra's opinion than to the debtors', and concludes that the fair market value of the property was $420,000 on September 8, 2013.

Although the court gives greater weight to the Dutra appraisal than the debtors' declaration, the court notes that the appropriate date for valuing the Property is the petition date, that being November 12, 2012. See In re Kanakaris, 341 B.R. 33, (US Bankr. S.D. Cal. 2006). Because the Dutra appraisal values the Property approximately ten months after the petition date, the value will be adjusted to take into account the increase in value during this period. In the ten-month period between the petition date and the date of the Dutra appraisal, home values in the Greater Sacramento and Placer County area experienced appreciation in the range of 10-20% annually. Thus, the court finds a 12% downward adjustment to the Dutra's appraised value is appropriate to reflect the fair market value of the Property on the petition date. Accordingly, the court will reduce the Dutra appraised value of $420,000 by 12% and value the Property as of the petition date at $369,600.

The court will hear the matter.

28. 12-29984-D-7 CAROLYN FUQUA
RCO-1
THE BANK OF NEW YORK MELLON
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
2-11-14 [59]

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 debtor received her discharge on February 7, 2014 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor 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.

29. 12-30686-D-7 DMW-2 — WEST COAST REAL ESTATE & MORTGAGE INC. — MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S), FEES: $2,304.50, EXPENSES: $140.56
2-11-14 [218]

Final ruling:

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

30. 14-20191-D-7 PD-1 — MICHAEL FOGLIA AND TAMARA MORGAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-14 [19]
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

Final ruling:

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

31. 13-21595-D-7 PA-6 — PATRICIA CUNNINGHAM — CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-27-13 [120]

Final ruling:

The hearing on this motion has been continued by stipulated order to April 30, 2014 at 10:00 a.m. No appearance is necessary.

32. 13-36203-D-7 SW-1 — VERONICA CORDOVA AND HEIDI WERNER — MOTION FOR RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. — 2-28-14 [27]

33. 13-35327-D-12 — LAURA BRANDON — MOTION TO AVOID LIEN OF KIM KNORR
3-4-14 [37]

Final ruling:

This is the debtor's motion to value collateral of Kim Knorr ("Knorr"). The motion will be denied for the following reasons. First, the moving party served only the attorney who obtained Knorr's abstract of judgment and who filed a proof of claim on Knorr's behalf in this case, but failed to serve Knorr himself or herself, as required by Fed. R. Bankr. P. 7004(b)(1) and 9014(b).

Second, the moving party failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6). "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added). Here, the moving party filed a copy of Knorr's abstract of judgment as an exhibit. However, she failed to file a recorded copy of the abstract; thus, she has failed to demonstrate that Knorr holds a judicial lien.

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

34. 13-35828-B-13 AARON/JESSIE PLUBELL
KAZ-1
JPMORGAN CHASE BANK, N.A.
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-10-14 [19]

Final ruling:

This case was converted to a case under Chapter 13 on February 21, 2014 and was subsequently transferred to Department B. As such the hearing on this motion is continued to April 1, 2014 at 9:31 a.m., to be heard by the Hon. Thomas C. Holman. No appearance is necessary on March 19, 2014.

35. 13-31634-D-7 DELIA/GERARDO MERCADO
DMW-3

MOTION FOR COMPENSATION FOR WEST AUCTION, LLC, AUCTIONEER(S), FEES: $583.44, EXPENSES: $580.00
2-20-14 [33]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to approve auctioneer's report and auctioneer's fees and expenses is supported by the record. As such the court will grant the motion to approve auctioneer's report and auctioneer's fees and expenses by minute order. No appearance is necessary.

36. 12-35735-D-11 DAVID CAROTHERS
MRL-22

MOTION TO DISMISS CASE
2-25-14 [306]

37. 13-28336-D-7 JUDITH-EUCHARIA EZIMORA
JB-1

CONTINUED MOTION TO EMPLOY BANKRUPTCY SHORT SALE SOLUTIONS

AS BROKER(S)
2-2-14 [31]

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 verified application for authorization to employ Kristian Peter of Bankruptcy Short Sale Solutions as real estate broker for trustee is supported by the record. As such the court will grant the verified application for authorization to employ Kristian Peter of Bankruptcy Short Sale Solutions as real estate broker for trustee. Moving party is to submit an appropriate order. No appearance is necessary.

38. 13-25947-D-7 KIETH/DAGNY MERRILL — MOTION TO ABANDON
HSM-2 — 3-5-14 [44]

39. 09-29162-D-11 SK FOODS, L.P. — MOTION TO EMPLOY SCHUIL & ASSOCIATES REAL ESTATE, INC. AS BROKER(S)
SH-256 — 3-5-14 [4755]

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

Tentative ruling:

This is the trustee's motion to employ a real estate broker. The motion was noticed 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.

Fed. R. Bankr. P. 2014(b) requires that a professional seeking to be employed by a bankruptcy trustee disclose his or her connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, and the

United States Trustee and persons employed in the office of the United States Trustee. The court appreciates that the declarant here has addressed his disclosures as pertaining to both himself and his firm, and has addressed not only the debtor, but the debtors in the consolidated estates and their creditors. However, although he has stated he and his firm have no connections with the trustee or the receiver, he does not state they have no connections with "any other party in interest," and does not mention the attorneys and accountants for the debtors, creditors, and other parties-in-interest. The court intends to continue the hearing to allow the trustee to supplement the record. For future reference, counsel's attention is directed to LBR 2014-1.

The court will hear the matter.

40. 09-29162-D-11 SK FOODS, L.P.
10-2016 SH-17
SHARP ET AL V. SKF AVIATION, LLC ET AL

MOTION FOR ENTRY OF DEFAULT JUDGMENT
3-5-14 [614]

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

41. 14-21166-D-7 EDMUND/AMANDA HAM
SW-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-28-14 [9]

42. 13-35671-D-11 CARLYLE STATION LLC
TMP-3

MOTION TO EMPLOY TORY M. PANKOPF AS ATTORNEY(S)
1-29-14 [40]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is the motion of the debtor-in-possession to employ counsel in this case.

The motion will be denied for the following reasons. Although the motion is confusing, it appears compensation in the form of a flat fee is contemplated. Thus, the moving party must serve all creditors, as required by Fed. R. Bankr. P. 2002(a)(6). First, the moving party failed to serve any of the creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g), and failed to serve two of them at all. Further, the moving party failed to serve the party requesting special notice at DN 9, as required by Fed. R. Bankr. P. 2002(g). Finally, the moving party failed to serve Wells Fargo, Wells Fargo Bank, and William R. Schwinn, listed on the debtor's schedules, at all, as required by Fed. R. Bankr. P. 2002(b).

Second, the motion gives conflicting information about the nature of counsel's compensation. First, it says counsel received a pre-petition fee of $20,000, and will accept a flat fee of an additional $10,000 (plus costs) for post-petition services. Thus, the motion states the total fee will be $30,000 regardless of actual time spent. However, the motion then states that the firm will receive a fee for both pre- and post-petition services based on its hourly rates and the amount of time spent, adding that counsel will make periodic fee applications. In short, the court is completely unable to determine the proposed arrangement for compensation, and the motion does not comply with Fed. R. Bankr. P. 2014(a).

Finally, counsel's declaration does not comply with Fed. R. Bankr. P. 2014(a) because it contains a double negative that renders the disclosure of connections incomprehensible. The declarant states: "To the best of my knowledge and belief, neither the Firm nor myself have no other connection with the Debtor [and so on]." This is not a clear and unequivocal statement that the declarant and his firm have no connections.

The court will hear the matter.

43.	14-21186-D-7 MMW-1 MOAD LLC VS.	CONSTANTINO/CARMEN RAYA	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-24-14 [10]

44.	13-28288-D-7 TMP-1	MICHAEL MATRACIA	MOTION TO DISMISS CASE 2-23-14 [76]

Tentative ruling:

This is the debtor's motion to dismiss this chapter 7 case. The chapter 7 trustee has filed opposition. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will hear opposition by other interested parties, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

First, the moving party failed to serve the Office of the United States Trustee. Instead, the proof of service states that notice has been electronically mailed "via this court's CM/ECF system" on the United States Trustee and the chapter 7 trustee, whereas this court's local rules do not permit service in that manner. Pursuant to Fed. R. Civ. P. 5(b)(3), a party may rely on the court's transmission facilities to make electronic service, if a local rule so authorizes. However, this court's local rules provide that service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) (incorporated herein by Fed. R. Bankr. P. 7005) "shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served." LBR 7005-1(d)(1). The rule specifies certain matters that must be included in the e-mail. See id. In other words, if electronic service is to be used, the moving party must actually serve the other parties by electronic mail, and may not rely on service by the court's CM/ECF system.

Second, the moving party failed to serve the creditor filing Claim No. 7 at the address on its proof of claim, as required by Fed. R. Bankr. P. 2002(g), and failed to serve the Franchise Tax Board at its complete address on the Roster of Governmental Agencies, as required by LBR 2002-1(b).

Third, the conduct of the debtor and his counsel since the case was converted to chapter 7 causes considerable concern. The meeting of creditors in the converted case was initially set for January 22, 2014. By that time, and as early as December 14, 2013, Tory Pankopf had filed a substitution of attorneys, by which he purported to substitute in as the debtor's counsel. Although Mr. Pankopf did not initially submit a proposed order, and the substitution was not approved by the court, as required by LBR 2017-1(h), until February 20, 2014, the substitution, which was signed by Mr. Pankopf, the debtor, and the debtor's former counsel, expressly stated that Mr. Pankopf "accepts the above substitution and acknowledges responsibility for all pending dates and deadlines." Despite that language, Mr. Pankopf did not attend the meeting of creditors on January 22, 2014,[1] and the meeting was continued.

The motion states that Mr. Pankopf then informed the trustee he and his client wanted the case dismissed because it was not appropriate for liquidation. Mr. Pankopf then drafted this motion, and "was under the impression that it had been filed and thus, [that] his appearance at the continued Meeting of Creditors on February 19, 2014, was not required. As a result, neither the Debtor nor his counsel appeared." Motion to Dismiss, filed Feb. 23, 2014, at 2:24-27.

The failure of any counsel to appear at the initial meeting on the debtor's behalf, and the failure of both the debtor and Mr. Pankopf to appear at the continued meeting are unjustified. First, the debtor was not in pro se on January 22, 2014, the date of the initial meeting. Because the substitution of attorneys had not yet been approved by the court, the debtor's former counsel was still attorney of record. See LBR 2017-1(e) and (h). Further, Mr. Pankopf had expressly undertaken, over a month earlier, to represent the debtor, and had acknowledged responsibility for all dates and deadlines. The absence of court approval of the substitution was not a satisfactory excuse for him not to appear at the meeting of creditors. Finally, the pendency of a motion to dismiss a case is not a satisfactory excuse for either the debtor or his attorney to fail to appear at an

initial or continued meeting of creditors. A debtor's duty to appear and be examined at a meeting of creditors is fundamental to the bankruptcy process; in this case, the debtor has failed to comply with that duty.

Finally, the chapter 7 trustee opposes the motion on the ground that it appears the debtor has failed to list all his assets or has not properly disclosed his assets on his schedules. For example, the trustee has been unable to determine the value of a Calabria ski boat because the debtor listed its value as unknown, and failed to state its model year. Further, although the debtor's Schedule I and statement of financial affairs indicate he works as a landscape contractor, he has failed to list the business or any business assets on his Schedule B. The court notes also that, in a motion to dismiss or convert the case, filed November 12, 2013, the United States Trustee pointed out that the debtor had testified he and his former wife own a 1997 Expedition, but the debtor had failed to amend his Schedule B to disclose his interest in that vehicle. As of this date, he has still failed to do so. In short, it appears the debtor has failed to comply in good faith with his duty of careful, complete, and accurate reporting in his schedules. See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007).

Given these circumstances, the court is unable to conclude that there would be no legal prejudice to creditors from dismissal of this case, and the motion will be denied. The court will hear the matter.

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1 The motion states that the debtor appeared pro se; the trustee states that no one appeared – not the debtor, not counsel.

45.	13-33590-D-7 DWK-1	PAUL/DEBORAH ANN PULLIN	MOTION TO COMPEL ABANDONMENT 2-27-14 [21]
46.	14-21547-D-7 RJM-2	JENNINE QUIRING	MOTION TO EXTEND AUTOMATIC STAY O.S.T. 3-7-14 [18]