UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 2, 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.

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1. 11-43406-D-7 CWC-7 — VIRGILIO/JENNIFER GOES — MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN, ACCOUNTANT(S), FEES: $2,920.00, EXPENSES: $0.00 3-3-14 [71]

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. 11-43406-D-7 CWC-8 — VIRGILIO/JENNIFER GOES — MOTION FOR COMPENSATION FOR CARL W. COLLINS, TRUSTEE'S ATTORNEY(S), FEES: $4,810.50, EXPENSES: $145.90 3-3-14 [76]

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.

3. 09-33808-D-11 KIP/ILLA SKIDMORE — MOTION FOR ENTRY OF DEFAULT JUDGMENT
13-2192 RLC-2 — 2-28-14 [26]
REYNOLDS V. CUSHMAN REXRODE CORPORATION ET AL

Final ruling:

This is the plaintiff's application for entry of a default judgment against defendant Umpqua Bank (the "Bank"). For the following reasons, the application will be denied. First, the moving party has failed to follow the proper procedure for obtaining a default judgment in that he has failed to obtain entry of the Bank's default. "Obtaining a default judgment is a two-step procedure whereby a party first obtains entry of default pursuant to Rule 55(a) and thereafter applies to the Court for an entry of default judgment pursuant to Rule 55(b)." United States v. Approximately $16,755.00 in U.S. Currency, 2014 U.S. Dist. LEXIS 20709, *6 (E.D. Cal. Feb. 18, 2014), citing Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). Thus, "courts deny motions for default judgment where default has not been previously entered." Rhodes v. Cal. Dep't of Corr., 2014 U.S. Dist. LEXIS 15119, *5 (E.D. Cal. Feb. 6, 2014); see also All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007) ["Without an entry of default, it is not permissible to proceed to the second step and enter default judgment."].

The moving party's application states: "The clerk has previously entered the default of said defendant on December 17, 2013." Application for Default Judgment, filed Feb. 28, 2014, at 2:3-4. That statement is inaccurate. On December 17, 2013, the moving party filed an Application for Entry of Default naming the Bank among the defendants whose default was sought. The same day, the moving party filed his declaration, in which he stated that the summons and complaint had been served on all parties on June 10, 2013; that an answer was due July 10, 2013; and that the defendants named in the application had failed to appear or otherwise defend, and were therefore in default. Finally, the moving party submitted a document entitled Entry of Default, which was, however, signed by the moving party, and the moving party failed to submit a proposed entry of default for signature on behalf of the Clerk of the court. On December 19, 2013, the clerk's office filed a memorandum by which it advised the moving party that he had failed to submit the proper request and proposed entry of default on EDC forms. Thereafter, the moving party took no further action to obtain entry of the Bank's default, and default has not been entered. Accordingly, the present application for entry of a default judgment is premature.

Second, for two reasons, the moving party has failed to establish that the summons and complaint were properly served on the Bank. First, although it purports to evidence service on June 10, 2013, the proof of service of the summons and complaint was not signed until December 17, 2013, and was not filed until December 18, 2013, more than six months after the complaint was filed and the summons was issued, and more than six months after service was purportedly made. By contrast, the Order to Confer on Initial Disclosures and Setting Deadlines, filed June 10, 2013, stated: "The summons, complaint, and this order shall be served by the plaintiff within 14 days of the date of this order. A return or proof of service shall be filed within 7 days after service." (Emphasis added.) The filing of the proof of service more than six months after the date of service was in violation of this order.

The moving party has failed to demonstrate proper service for the additional independent reason that the proof of service fails to evidence service on the Bank in the manner required by the applicable rule. The proof of service states that the moving party served the Bank (1) by first-class mail to the attention of an "Officer, Managing or General Agent and/or Agent for Service of Process"; (2) by first-class mail to the Bank's agent for service of process, as registered with the Secretary of State's office; and (3) by first-class mail to the attorney who appeared on behalf of the Bank in the underlying chapter 11 case in which this adversary proceeding is pending. The first method was insufficient because the rule requires service on an FDIC-insured institution to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h). Service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be to the attention of an officer, managing or general agent, or agent for service of process. Fed. R. Bankr. P. 7004(b)(3). If service on an FDIC-insured institution, such as the Bank, to the attention of an "Officer, Managing or General Agent and/or Agent for Service of Process" were appropriate for service on an FDIC-insured institution, the distinction in the manner of service, between Rule 7004(b)(3) and Rule 7004(h), would be superfluous. The second method was insufficient because service on an FDIC-insured institution must be to the attention of an officer, whereas it is unlikely an officer of the Bank is to be found at the location of the Bank's corporate agent for service of process. The third method was insufficient because there is no evidence the attorney who appeared for the Bank in the underlying chapter 11 case is authorized to accept service of process for the Bank in an adversary proceeding pursuant to Fed. R. Bankr. P. 7004. In addition, all three methods were insufficient because the rule requires that an FDIC-insured institution be served by certified mail, not first-class mail. Fed. R. Bankr. P. 7004(h).

Third, the present application was not properly served on the Bank for the reasons just described with respect to the summons and complaint. See Fed. R. Bankr. P. 7004(h) and 9014(b).

As a result of these service and other procedural defects, the application will be denied by minute order. No appearance is necessary. With regard to any future service of the summons and complaint, the moving party will need to obtain issuance of an alias summons. See Fed. R. Bankr. P. 7004(e). Finally, pursuant to Fed. R. Civ. P. 4(m), incorporated herein by Fed. R. Bankr. P. 7004(a)(1), the court will by separate order require that service of the summons and complaint be made not later than April 18, 2014, and that a proof of service be filed not later than April 23, 2014; otherwise, the complaint will be dismissed without prejudice as against the Bank.

4.	09-33808-D-11 13-2192 REYNOLDS V. CUSHMAN REXRODE CORPORATION ET AL	KIP/ILLA SKIDMORE RLC-3	MOTION FOR ENTRY OF DEFAULT JUDGMENT 2-28-14 [30]

Final ruling:

This is the plaintiff's application for entry of a default judgment against defendant Fidelity and Deposit Co. of Maryland ("Fidelity"). For the following reasons, the application will be denied. First, the moving party has failed to follow the proper procedure for obtaining a default judgment in that he has failed to obtain entry of Fidelity's default. "Obtaining a default judgment is a two-step

procedure whereby a party first obtains entry of default pursuant to Rule 55(a) and thereafter applies to the Court for an entry of default judgment pursuant to Rule 55(b)." United States v. Approximately $16,755.00 in U.S. Currency, 2014 U.S. Dist. LEXIS 20709, *6 (E.D. Cal. Feb. 18, 2014), citing Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). Thus, "courts deny motions for default judgment where default has not been previously entered." Rhodes v. Cal. Dep't of Corr., 2014 U.S. Dist. LEXIS 15119, *5 (E.D. Cal. Feb. 6, 2014); see also All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007) ["Without an entry of default, it is not permissible to proceed to the second step and enter default judgment."].

The moving party's application states: "The clerk has previously entered the default of said defendant on December 17, 2013." Application for Default Judgment, filed Feb. 28, 2014, at 2:1-2. That statement is inaccurate. On December 17, 2013, the moving party filed an Application for Entry of Default naming Fidelity among the defendants whose default was sought. The same day, the moving party filed his declaration, in which he stated that the summons and complaint had been served on all parties on June 10, 2013; that an answer was due July 10, 2013; and that the defendants named in the application had failed to appear or otherwise defend, and were therefore in default. Finally, the moving party submitted a document entitled Entry of Default, which was, however, signed by the moving party, and the moving party failed to submit a proposed entry of default for signature on behalf of the Clerk of the court. On December 19, 2013, the clerk's office filed a memorandum by which it advised the moving party that he had failed to submit the proper request and proposed entry of default on EDC forms. Thereafter, the moving party took no further action to obtain entry of Fidelity's default, and default has not been entered. Accordingly, the present application for entry of a default judgment is premature.

Second, for two reasons, the moving party has failed to establish that the summons and complaint were properly served on Fidelity. First, although it purports to evidence service on June 10, 2013, the proof of service of the summons and complaint was not signed until December 17, 2013, and was not filed until December 18, 2013, more than six months after the complaint was filed and the summons was issued, and more than six months after service was purportedly made. By contrast, the Order to Confer on Initial Disclosures and Setting Deadlines, filed June 10, 2013, stated: "The summons, complaint, and this order shall be served by the plaintiff within 14 days of the date of this order. A return or proof of service shall be filed within 7 days after service." (Emphasis added.) The filing of the proof of service more than six months after the date of service was in violation of this order.

The moving party has failed to demonstrate proper service for the additional independent reason that the proof of service fails to evidence service on Fidelity at all. That is, Fidelity's name does not appear on the service list of the proof of service of the summons and complaint at all.

As a result of these service and other procedural defects, the application will be denied by minute order. No appearance is necessary. With regard to any future service of the summons and complaint, the moving party will need to obtain issuance of an alias summons. See Fed. R. Bankr. P. 7004(e). Finally, pursuant to Fed. R. Civ. P. 4(m), incorporated herein by Fed. R. Bankr. P. 7004(a)(1), the court will by separate order require that service of the summons and complaint be made not later than April 18, 2014, and that a proof of service be filed not later than April 23, 2014; otherwise, the complaint will be dismissed without prejudice as against Fidelity.

5. 09-33808-D-11 KIP/ILLA SKIDMORE — MOTION FOR ENTRY OF DEFAULT JUDGMENT
13-2192 RLC-4 — 2-28-14 [34]
REYNOLDS V. CUSHMAN REXRODE CORPORATION ET AL

Final ruling:

This is the plaintiff's application for entry of a default judgment against defendant Gary Ravel ("Ravel"). For the following reasons, the application will be denied. First, the moving party has failed to follow the proper procedure for obtaining a default judgment in that he has failed to obtain entry of Ravel's default. "Obtaining a default judgment is a two-step procedure whereby a party first obtains entry of default pursuant to Rule 55(a) and thereafter applies to the Court for an entry of default judgment pursuant to Rule 55(b)." United States v. Approximately $16,755.00 in U.S. Currency, 2014 U.S. Dist. LEXIS 20709, *6 (E.D. Cal. Feb. 18, 2014), citing Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). Thus, "courts deny motions for default judgment where default has not been previously entered." Rhodes v. Cal. Dep't of Corr., 2014 U.S. Dist. LEXIS 15119, *5 (E.D. Cal. Feb. 6, 2014); see also All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007) ["Without an entry of default, it is not permissible to proceed to the second step and enter default judgment."].

The moving party's application states: "The clerk has previously entered the default of said defendant on December 17, 2013." Application for Default Judgment, filed Feb. 28, 2014, at 2:3-4. That statement is inaccurate. On December 17, 2013, the moving party filed an Application for Entry of Default naming Ravel among the defendants whose default was sought. The same day, the moving party filed his declaration, in which he stated that the summons and complaint had been served on all parties on June 10, 2013; that an answer was due July 10, 2013; and that the defendants named in the application had failed to appear or otherwise defend, and were therefore in default. Finally, the moving party submitted a document entitled Entry of Default, which was, however, signed by the moving party, and the moving party failed to submit a proposed entry of default for signature on behalf of the Clerk of the court. On December 19, 2013, the clerk's office filed a memorandum by which it advised the moving party that he had failed to submit the proper request and proposed entry of default on EDC forms. Thereafter, the moving party took no further action to obtain entry of Ravel's default, and default has not been entered. Accordingly, the present application for entry of a default judgment is premature.

Second, for two reasons, the moving party has failed to establish that the summons and complaint were properly served on Ravel. First, although it purports to evidence service on June 10, 2013, the proof of service of the summons and complaint was not signed until December 17, 2013, and was not filed until December 18, 2013, more than six months after the complaint was filed and the summons was issued, and more than six months after service was purportedly made. By contrast, the Order to Confer on Initial Disclosures and Setting Deadlines, filed June 10, 2013, stated: "The summons, complaint, and this order shall be served by the plaintiff within 14 days of the date of this order. A return or proof of service shall be filed within 7 days after service." (Emphasis added.) The filing of the proof of service more than six months after the date of service was in violation of this order.

The moving party has failed to demonstrate proper service for the additional independent reason that the proof of service fails to evidence service on Ravel in the manner required by the applicable rule. The rule requires that service on an

individual be made by mailing copies "to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). The proof of service states that the moving party served Ravel only through the attorney who appeared on Ravel's behalf in the underlying chapter 11 case in which this adversary proceeding is pending, with no evidence that attorney is authorized to accept service of process for Ravel in an adversary proceeding pursuant to Fed. R. Bankr. P. 7004.

Third, the present application was not properly served on Ravel for the same reason: it was served only through the attorney who appeared on Ravel's behalf in the underlying chapter 11 case. See Fed. R. Bankr. P. 7004(b)(1) and 9014(b).

As a result of these service and other procedural defects, the application will be denied by minute order. No appearance is necessary. With regard to any future service of the summons and complaint, the moving party will need to obtain issuance of an alias summons. See Fed. R. Bankr. P. 7004(e). Finally, pursuant to Fed. R. Civ. P. 4(m), incorporated herein by Fed. R. Bankr. P. 7004(a)(1), the court will by separate order require that service of the summons and complaint be made not later than April 18, 2014, and that a proof of service be filed not later than April 23, 2014; otherwise, the complaint will be dismissed without prejudice as against Ravel.

6.	09-33808-D-11 13-2192 REYNOLDS V. CUSHMAN REXRODE CORPORATION ET AL	KIP/ILLA SKIDMORE RLC-5	MOTION FOR ENTRY OF DEFAULT JUDGMENT 2-28-14 [38]

Final ruling:

This is the plaintiff's application for entry of a default judgment against defendant Intervest-Mortgage Investment Co. ("Intervest"). For the following reasons, the application will be denied. First, the moving party has failed to follow the proper procedure for obtaining a default judgment in that he has failed to obtain entry of Intervest's default. "Obtaining a default judgment is a two-step procedure whereby a party first obtains entry of default pursuant to Rule 55(a) and thereafter applies to the Court for an entry of default judgment pursuant to Rule 55(b)." United States v. Approximately $16,755.00 in U.S. Currency, 2014 U.S. Dist. LEXIS 20709, *6 (E.D. Cal. Feb. 18, 2014), citing Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). Thus, "courts deny motions for default judgment where default has not been previously entered." Rhodes v. Cal. Dep't of Corr., 2014 U.S. Dist. LEXIS 15119, *5 (E.D. Cal. Feb. 6, 2014); see also All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007) ["Without an entry of default, it is not permissible to proceed to the second step and enter default judgment."].

The moving party's application states: "The clerk has previously entered the default of said defendant on December 17, 2013." Application for Default Judgment, filed Feb. 28, 2014, at 2:3-4. That statement is inaccurate. On December 17, 2013, the moving party filed an Application for Entry of Default naming Intervest among the defendants whose default was sought. The same day, the moving party filed his declaration, in which he stated that the summons and complaint had been served on all parties on June 10, 2013; that an answer was due July 10, 2013; and that the defendants named in the application had failed to appear or otherwise defend, and were therefore in default. Finally, the moving party submitted a document entitled Entry of Default, which was, however, signed by the moving party, and the moving party failed to submit a proposed entry of default for signature on behalf of the

Clerk of the court. On December 19, 2013, the clerk's office filed a memorandum by which it advised the moving party that he had failed to submit the proper request and proposed entry of default on EDC forms. Thereafter, the moving party took no further action to obtain entry of Intervest's default, and default has not been entered. Accordingly, the present application for entry of a default judgment is premature.

Second, the moving party has failed to establish that the summons and complaint were properly served on Intervest. Although it purports to evidence service on June 10, 2013, the proof of service of the summons and complaint was not signed until December 17, 2013, and was not filed until December 18, 2013, more than six months after the complaint was filed and the summons was issued, and more than six months after service was purportedly made. By contrast, the Order to Confer on Initial Disclosures and Setting Deadlines, filed June 10, 2013, stated: "The summons, complaint, and this order shall be served by the plaintiff within 14 days of the date of this order. A return or proof of service shall be filed within 7 days after service." (Emphasis added.) The filing of the proof of service more than six months after the date of service was in violation of this order.

As a result of these service and other procedural defects, the application will be denied by minute order. No appearance is necessary. With regard to any future service of the summons and complaint, the moving party will need to obtain issuance of an alias summons. See Fed. R. Bankr. P. 7004(e). Finally, pursuant to Fed. R. Civ. P. 4(m), incorporated herein by Fed. R. Bankr. P. 7004(a)(1), the court will by separate order require that service of the summons and complaint be made not later than April 18, 2014, and that a proof of service be filed not later than April 23, 2014; otherwise, the complaint will be dismissed without prejudice as against Intervest.

7.	09-33808-D-11 13-2192 REYNOLDS V. CUSHMAN REXRODE CORPORATION ET AL	KIP/ILLA SKIDMORE RLC-6	MOTION FOR ENTRY OF DEFAULT JUDGMENT 2-28-14 [45]

Final ruling:

This is the plaintiff's application for entry of a default judgment against defendant ONTTNO LLC ("ONTTNO"). For the following reasons, the application will be denied. First, the moving party has failed to follow the proper procedure for obtaining a default judgment in that he has failed to obtain entry of ONTTNO's default. "Obtaining a default judgment is a two-step procedure whereby a party first obtains entry of default pursuant to Rule 55(a) and thereafter applies to the Court for an entry of default judgment pursuant to Rule 55(b)." United States v. Approximately $16,755.00 in U.S. Currency, 2014 U.S. Dist. LEXIS 20709, *6 (E.D. Cal. Feb. 18, 2014), citing Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). Thus, "courts deny motions for default judgment where default has not been previously entered." Rhodes v. Cal. Dep't of Corr., 2014 U.S. Dist. LEXIS 15119, *5 (E.D. Cal. Feb. 6, 2014); see also All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007) ["Without an entry of default, it is not permissible to proceed to the second step and enter default judgment."].

The moving party's application states: "The clerk has previously entered the default of said defendant on December 17, 2013." Application for Default Judgment, filed Feb. 28, 2014, at 2:3-4. That statement is inaccurate. On December 17, 2013,

the moving party filed an Application for Entry of Default naming ONTTNO among the defendants whose default was sought. The same day, the moving party filed his declaration, in which he stated that the summons and complaint had been served on all parties on June 10, 2013; that an answer was due July 10, 2013; and that the defendants named in the application had failed to appear or otherwise defend, and were therefore in default. Finally, the moving party submitted a document entitled Entry of Default, which was, however, signed by the moving party, and the moving party failed to submit a proposed entry of default for signature on behalf of the Clerk of the court. On December 19, 2013, the clerk's office filed a memorandum by which it advised the moving party that he had failed to submit the proper request and proposed entry of default on EDC forms. Thereafter, the moving party took no further action to obtain entry of ONTTNO's default, and default has not been entered. Accordingly, the present application for entry of a default judgment is premature.

Second, the moving party has failed to establish that the summons and complaint were properly served on ONTTNO. Although it purports to evidence service on June 10, 2013, the proof of service of the summons and complaint was not signed until December 17, 2013, and was not filed until December 18, 2013, more than six months after the complaint was filed and the summons was issued, and more than six months after service was purportedly made. By contrast, the Order to Confer on Initial Disclosures and Setting Deadlines, filed June 10, 2013, stated: "The summons, complaint, and this order shall be served by the plaintiff within 14 days of the date of this order. A return or proof of service shall be filed within 7 days after service." (Emphasis added.) The filing of the proof of service more than six months after the date of service was in violation of this order.

As a result of these service and other procedural defects, the application will be denied by minute order. No appearance is necessary. With regard to any future service of the summons and complaint, the moving party will need to obtain issuance of an alias summons. See Fed. R. Bankr. P. 7004(e). Finally, pursuant to Fed. R. Civ. P. 4(m), incorporated herein by Fed. R. Bankr. P. 7004(a)(1), the court will by separate order require that service of the summons and complaint be made not later than April 18, 2014, and that a proof of service be filed not later than April 23, 2014; otherwise, the complaint will be dismissed without prejudice as against ONTTNO.

8.	09-33808-D-11 13-2192 REYNOLDS V. CUSHMAN REXRODE CORPORATION ET AL	KIP/ILLA SKIDMORE RLC-7	MOTION FOR ENTRY OF DEFAULT JUDGMENT 2-28-14 [49]

Final ruling:

This is the plaintiff's application for entry of a default judgment against defendant Scott Rasmussen ("Rasmussen"). For the following reasons, the application will be denied. First, the moving party has failed to follow the proper procedure for obtaining a default judgment in that he has failed to obtain entry of Rasmussen's default. "Obtaining a default judgment is a two-step procedure whereby a party first obtains entry of default pursuant to Rule 55(a) and thereafter applies to the Court for an entry of default judgment pursuant to Rule 55(b)." United States v. Approximately $16,755.00 in U.S. Currency, 2014 U.S. Dist. LEXIS 20709, *6 (E.D. Cal. Feb. 18, 2014), citing Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). Thus, "courts deny motions for default judgment where default has not been previously entered." Rhodes v. Cal. Dep't of Corr., 2014 U.S. Dist. LEXIS 15119, *5

(E.D. Cal. Feb. 6, 2014); see also All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007) ["Without an entry of default, it is not permissible to proceed to the second step and enter default judgment."].

The moving party's application states: "The clerk has previously entered the default of said defendant on December 17, 2013." Application for Default Judgment, filed Feb. 28, 2014, at 2:3-4. That statement is inaccurate. On December 17, 2013, the moving party filed an Application for Entry of Default naming Rasmussen among the defendants whose default was sought. The same day, the moving party filed his declaration, in which he stated that the summons and complaint had been served on all parties on June 10, 2013; that an answer was due July 10, 2013; and that the defendants named in the application had failed to appear or otherwise defend, and were therefore in default. Finally, the moving party submitted a document entitled Entry of Default, which was, however, signed by the moving party, and the moving party failed to submit a proposed entry of default for signature on behalf of the Clerk of the court. On December 19, 2013, the clerk's office filed a memorandum by which it advised the moving party that he had failed to submit the proper request and proposed entry of default on EDC forms. Thereafter, the moving party took no further action to obtain entry of Rasmussen's default, and default has not been entered. Accordingly, the present application for entry of a default judgment is premature.

Second, for two reasons, the moving party has failed to establish that the summons and complaint were properly served on Rasmussen. First, although it purports to evidence service on June 10, 2013, the proof of service of the summons and complaint was not signed until December 17, 2013, and was not filed until December 18, 2013, more than six months after the complaint was filed and the summons was issued, and more than six months after service was purportedly made. By contrast, the Order to Confer on Initial Disclosures and Setting Deadlines, filed June 10, 2013, stated: "The summons, complaint, and this order shall be served by the plaintiff within 14 days of the date of this order. A return or proof of service shall be filed within 7 days after service." (Emphasis added.) The filing of the proof of service more than six months after the date of service was in violation of this order.

The moving party has failed to demonstrate proper service for the additional independent reason that the proof of service fails to evidence service on Rasmussen in the manner required by the applicable rule. The rule requires that service on an individual be made by mailing copies "to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Fed. R. Bankr. P. 7004(b)(1). The proof of service states that the moving party served Rasmussen only through the attorney who appeared on Rasmussen's behalf in the underlying chapter 11 case in which this adversary proceeding is pending, with no evidence that attorney is authorized to accept service of process for Rasmussen in an adversary proceeding pursuant to Fed. R. Bankr. P. 7004.

As a result of these service and other procedural defects, the application will be denied by minute order. No appearance is necessary. With regard to any future service of the summons and complaint, the moving party will need to obtain issuance of an alias summons. See Fed. R. Bankr. P. 7004(e). Finally, pursuant to Fed. R. Civ. P. 4(m), incorporated herein by Fed. R. Bankr. P. 7004(a)(1), the court will by separate order require that service of the summons and complaint be made not later than April 18, 2014, and that a proof of service be filed not later than April 23, 2014; otherwise, the complaint will be dismissed without prejudice as against Rasmussen.

9. 13-30317-D-7 JAMES COREY MOTION TO AMEND COMPLAINT
13-2308 JRR-1 3-5-14 [17]
ROBERTS V. EDWARDS

Tentative ruling:

This is the motion of the plaintiff, who is the trustee in the underlying chapter 7 case in which this adversary proceeding is pending (the "trustee"), for leave to file an amended complaint. The defendant has filed opposition. For the following reasons, the motion will be granted, on condition that the trustee agrees to an extension of the discovery bar date if requested by the defendant.

By his original complaint, the trustee sought to recover, pursuant to §§ 547, 548, and 550(a) of the Bankruptcy Code, certain interests in real property allegedly transferred by the debtor in the underlying chapter 7 case to the defendant. By his proposed amended complaint, a copy of which is filed as an exhibit, the trustee does not seek to add to or change any of the factual allegations of the complaint, but only to add a claim to recover the same real property interests pursuant to the California Uniform Fraudulent Transfer Act, Cal. Civ. Code §§ 3439-3439.12. The trustee states as his motivation for filing the amended complaint that "the standard of proof for insolvency under California Law is different than Bankruptcy Law." Motion for Leave to Amend, filed March 5, 2014, at ¶ 5.

The motion is brought pursuant to Fed. R. Civ. P. 15(a), incorporated herein by Fed. R. Bankr. P. 7015. Under the rule, "[t]he court should freely give leave when justice so requires." Rule 15(a)(2). The courts are to apply the rule "with extreme liberality," Forsyth v. Humana, Inc., 114 F.3d 1467, 1482 (9th Cir. 1997), in light of the following factors: "(1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party." Id. These factors are not to be given equal weight, Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995); thus, "it is the consideration of prejudice to the opposing party that carries the greatest weight." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). "Absent prejudice, or a strong showing of any of the remaining . . . factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend." Id.

The trustee's original complaint was filed six months ago, on October 1, 2013. The court finds that a six-month delay is not sufficiently lengthy to weigh against allowing the amendment.[1] Further, the court has no basis on which to conclude that the trustee has acted in bad faith. As indicated above, the most important factor is whether the defendant will be prejudiced if the amendment is allowed. As to that factor, the defendant has the burden of proof. DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 187 (9th Cir. 1987). In this case, the defendant has not claimed she would suffer any prejudice as a result of the amendment, at least no prejudice she would not suffer from the original complaint itself.

The bulk of the defendant's opposition is directed to her contention that both complaints fail to provide sufficient factual support for their allegations. In essence, she suggests the complaints fail to state a claim upon which relief can be granted, and she requests they be dismissed. This contention appears to pertain to the final factor the court is to consider – whether amendment to the complaint would be futile. The court recognizes that the "proper test to be applied when determining the legal sufficiency of a proposed amendment [for the purpose of determining whether the amendment would be futile] is identical to the one used when

considering the sufficiency of a pleading challenged under Rule 12(b)(6)." Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988) (citations omitted). However, in this case, the proposed amended complaint is almost identical to the original one; in other words, there is nothing about the amended complaint, as distinguished from the original complaint, that renders it insufficient to state a claim. If the defendant wishes to challenge the sufficiency of the amended complaint to state a claim upon which relief can be granted, she is free to do so on her own properly noticed motion. It is not appropriate for the court to consider the issue at this stage, where it has been raised only in response to a motion for leave to amend.

The court would add two cautions for the defendant. She contends (1) the court's file in the underlying chapter 7 case lacks sufficient information to enable the court to rule on the issues in this adversary proceeding; and (2) she "needs information which is not provided in the complaints in order to properly prepare for a defense." Defendant's Objection to Plaintiff's Motion, filed March 18, 2014, at 5:19-21. The defendant is cautioned that the trustee will not be limited in this proceeding to matters contained in the court's file or to information set forth in the complaints. The defendant should be aware that she has the right to take discovery to obtain information not provided in the complaints or the court's file. In short, the court would urge the defendant to seek legal counsel if she is at all uncertain how to proceed in this matter.

This brings the court to its one concern. The trustee, for whatever reason, did not include the state law claims in his original complaint, and now contends the complaint needs to be amended because the standard of proof of insolvency differs under state law. He believes the issue of insolvency will play a major role in the action. In these circumstances, the court questions whether the remaining time for discovery is sufficient to allow the defendant to explore the facts, given the different standard of proof that will apparently now be in play. The discovery bar date is presently May 30, 2014, less than two months from the date of the hearing on this motion. By contrast, the trustee has had six months to conduct discovery under his original theories. The court is concerned that the defendant may experience prejudice to her ability to prepare her case if the discovery bar date is not extended, and accordingly, intends to grant the motion conditioned on the trustee's agreement to an extension of the discovery bar date if requested by the defendant.

For the reasons stated, the court intends to grant the motion on the condition just described. The trustee will have ten days from the date of entry of the order in which to file his amended complaint. As requested by the trustee, the defendant's answer to the original complaint will be deemed an answer to the amended complaint. The court will hear the matter.

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1 Delay alone is not sufficient reason to deny leave to amend. DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987).

10. 13-28020-D-7 HSM-6 — ROGER/BONNIE TURNER — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
2-20-14 [44]

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 extend deadline to file a complaint objecting to discharge of the debtor is supported by the record. As such the court will grant the motion to extend deadline to file a complaint objecting to discharge of the debtor. Moving party is to submit an appropriate order. No appearance is necessary.

11. 13-34820-D-7 JCW-1 — PHILIP ALBA — MOTION FOR RELIEF FROM AUTOMATIC STAY
2-21-14 [26]

PNC BANK, N.A. VS.

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 debtor received his discharge on March 11, 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.

12. 13-35134-D-11 — HESS ROAD STORAGE LLC — STATUS CONFERENCE RE: VOLUNTARY PETITION
11-27-13 [1]

Tentative ruling:

The court has several concerns regarding this chapter 11 case. First, the case was converted from chapter 7 on February 19, 2014, yet despite the immediate issuance of a Notice to File Documents in Converted Case and the subsequent issuance of an order to show cause, the debtor still has not filed a list of equity security holders. The debtor filed a response to the order to show cause on March 14, 2014, providing several alleged reasons the list of 20 largest unsecured creditors had not been filed until March 12, 2014; however, the response does not mention the list of equity security holders, which as of this date, still has not been filed.[1]

Second, it appears there is a group of secured creditors holding claims totaling $2,400,000, who are not listed on any of the debtor's schedules or on its master address list; thus, they have not been given notice of this case. On the original and amended Schedules D, the debtor included its own name and address in the column where the creditors' names and addresses are supposed to appear, and in the column where the description of the claim is to appear, the debtor states: "2009 - Original Investors who hold note on property." The amount of the claim is

listed as $2,400,000, against collateral having a value of $2,400,000, and the unsecured portion of the claim is also listed as $2,400,000. These figures do not make sense, but more importantly, the names and addresses of the "original investors" who apparently hold the $2,400,000 in claims do not appear anywhere in the record, and they have not been given notice of the case.[2]

Third, the debtor's Schedule G contains two entries, neither with an address. The exact listings are:

Name and mailing address of other parties	Description of contract or lease
Debtor has contracts with the clients currently leasing storage units	Unit rentals
U-Haul contract	To rent trucks and trailers, not kept on site

A bankruptcy debtor is required to provide on its master address list the name and address of each entity included on its Schedules D, E, F, G, and H. Fed. R. Bankr. P. 1007(a)(1). The listing of addresses is not optional. The court has very serious concerns about a case that has been pending over four months where the parties to the debtor's storage contracts and the holders of $2.4 million in secured claims have never been given notice of the case. The court notes that the meeting of creditors has been held and concluded, without those secured creditors and parties to contracts having had the opportunity to attend. Those creditors and parties have also not been served with the Order to (1) File Status Report; and (2) Attend Status Conference or the debtor's status conference statement, as required by that order. In light of the above, the court intends to dismiss the case or reconvert the case to Chapter 7.

The court will hear the matter.

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1 The court cannot determine whether the debtor intends its amended Schedule D, filed March 12, 2014, as a list of equity security holders. On that schedule, the debtor changed the characterization of seven individuals, listed on the original Schedule D as creditors, to "Member not creditor," adding that each claim is disputed. This does not satisfy the requirement to file a list of equity security holders. Further, the amended Schedule D is not accompanied by an amendment cover sheet, EDC 2-015, and is not otherwise verified by the debtor, as required by Fed. R. Bankr. P. 1008.

2 These are not the same individuals who are listed elsewhere on the amended Schedule D as "Member not creditor" – the claims of those individuals total only $285,500. There is a list of names, percentages, and dollar amounts attached to the debtor's statement of financial affairs. The list contains 39 names of individuals or couples, and the total of the dollar amounts is $2,708,500. The names are grouped into "Class B Investors" and "Preferred Dollar Investors"; thus, it appears this is the list of equity security holders. The list contains no addresses, and thus, does not satisfy the requirement.

13. 13-34135-D-7 JEB-1 — BALBIR SANDHU — CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-21-14 [16]

Final ruling:

The debtor appeared at the continued meeting of creditors and the meeting has been concluded. As a result, the motion will be denied by minute order. No appearance is necessary.

14. 13-31754-D-11 RJ-3 — VICTOR/SVETLANA PARSHIN — CONTINUED MOTION TO EMPLOY RICHARD JARE AS ATTORNEY
2-19-14 [59]

Tentative ruling:

This is the motion of the debtors-in-possession in this chapter 11 case to employ Richard Jare ("Counsel") as their counsel in the case. The hearing was continued to permit Counsel to supplement the record and the United States Trustee to file opposition. For the following reasons, the motion will be denied.

"An applicant for employment as a professional must, under penalty of perjury, disclose facts relevant to determining eligibility for employment under 11 U.S.C. § 327. Bankr. R. 2014(a). The burden is on the person making the statement to come forward with facts pertinent to eligibility and to make full, candid, and complete disclosure." In re Plaza Hotel Corp., 111 B.R. 882, 883 (Bankr. E.D. Cal.1990) (citation omitted). To enable the court to determine his eligibility, the attorney must disclose all of his connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. Fed. R. Bankr. P. 2014(a); see also LBR 2014-1.

In his original declaration supporting the motion, Counsel's only mention of his connections with the parties listed in the rule was as follows: "I do not have any connection with the Debtor, the Debtors in Possession, the creditors, or with the office of the United States Trustee." Declaration of Richard Jare, filed Feb. 19, 2014, at ¶ 1. Thus, the declaration did not track the language of the rule, in that it did not mention connections with other parties-in-interest, with the respective attorneys and accountants of the debtors, creditors, and other parties-in-interest, or with persons employed in the office of the United States Trustee. As far as arrangements for Counsel's compensation were concerned, Counsel stated only that "[t]he hourly rate in the fee agreement signed by the debtor[s] is $225.00, and this rate is consistent with the Lodestar rate for this case." Id. at ¶ 3. Counsel did not mention having received any money from the debtors, either for prior services or as a retainer toward future services, and did not mention any other arrangements for compensation, although the rule requires an employment application to disclose "any proposed arrangement for compensation." Fed. R. Bankr. P. 2014(a).

Based on that record, the court issued a tentative ruling in advance of the original hearing, indicating its intention to deny the motion because Counsel's

declaration did not track the language of the applicable rule, and thus, did not disclose whether he had any connections with any of the listed parties. The court noted in the ruling that Counsel had also failed to file the statement required by Fed. R. Bankr. P. 2016(b). That rule implements § 329 of the Bankruptcy Code by requiring an attorney representing a bankruptcy debtor to disclose, within 14 days after the order for relief the compensation paid or agreed to be paid and the source of such compensation. If a payment is received or an agreement for payment is made later, the rule requires disclosure within 14 days after the date of any payment or agreement not previously disclosed. Counsel substituted in to this case on behalf of the debtors on February 8, 2014; by the 14th day thereafter, he had not disclosed any payments received or any agreement for payment except that the fee agreement between him and the debtors provided for an hourly rate of $225.

In response to the tentative ruling, Counsel filed an amended declaration, stating:

> I do not have any connection with the Debtor[s], the Debtors in Possession, the creditors, or with the office of the United States Trustee. I do not have any employees or associates. I, insofar as I have been able to ascertain, do not have any connection with the debtors, Victor A & Svetlana Parshin, (hereinafter "Applicants"), their creditors or any party-in-interest, or their respective attorneys, accountants, the U.S. Trustee or any person employed in the office of the United States trustee.

Amended Declaration of Richard Jare, filed March 5, 2014, at ¶¶ 1, 2. In other words, the amended declaration included all the persons required by the rules to be addressed, and Counsel continued to maintain he had no connections with the debtors. In response to the tentative ruling, Counsel also filed a Rule 2016(b) statement in which he disclosed for the first time that for his services in the case, he had agreed to a $500 flat fee for assessing the case prior to being retained, and thereafter would charge $225 per hour; that he had received $3,500 from the debtors prior to filing the statement; and that the debtors are to supplement that retainer in $2,000 increments as the retainer is exhausted. None of those arrangements were disclosed in the employment application or in Counsel's supporting declaration.

The United States Trustee is correct: The agreed $500 flat fee for assessing the case and the debtors' payment of the $3,500 retainer are the sorts of connections required by Rule 2014(a) to be disclosed in an employment application and supporting declaration; here, they were not disclosed in those documents. The debtors' agreement to replenish the retainer in $2,000 increments was another connection Counsel was required by the same rule to disclose, which he did not disclose. The court recognizes that Counsel made belated disclosure of these connections in his Rule 2016(b) statement. However, when an attorney makes the disclosures only after his failure to make them has been unearthed by the court, the United States Trustee, or another party-in-interest, his conduct undermines the requirement that he make all required disclosures of his own volition. Here, Counsel has given the court no reason to believe the compensation arrangements between him and the debtors, or the fact of the debtors' payment of a $3,500 retainer, would ever have been disclosed by Counsel had it not been for the court's prompting in its tentative ruling.

The United States Trustee is also correct that the debtors' $3,500 payment to Counsel constituted a post-petition use of property of the estate outside the ordinary course of business, for which Counsel was required to notice a hearing and

obtain prior court approval, pursuant to § 363(b)(1). "An attorney is not free to receive a postpetition retainer payment from property of the estate without prior permission from the court after parties in interest (normally other claimants of administrative expenses) have had an opportunity to object." Plaza Hotel Corp., 111 B.R. 882 at 884, n.4. Thus, as the United States Trustee correctly concludes, Counsel holds an interest adverse to the estate, in that he holds a retainer comprising property of the estate that he was not authorized to receive, and pursuant to § 327(a), he is not eligible to be employed by the debtors. Counsel's conduct in placing himself in this position and in failing to make the required disclosures when required undercuts the court's confidence in his ability to handle the chapter 11 case. "The law regarding disclosure is familiar" (Plaza Hotel Corp., 111 B.R. at 883), and it should be especially familiar to an attorney proposing to represent a chapter 11 debtor-in-possession. Here, however, Counsel was either unfamiliar with the applicable rules or failed to take appropriate care to comply with them.

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

15. 13-31754-D-11 VICTOR/SVETLANA PARSHIN
UST-2

MOTION FOR THE COURT'S DETERMINATION OF THE REASONABLE VALUE OF THE SERVICES OF JEFFERY YAZEL
2-28-14 [64]

Tentative ruling:

This is the motion of the United States Trustee for a determination of the reasonable value of the services performed by the debtors' former counsel in this case ("Prior Counsel"), and for an order directing Prior Counsel to disgorge the amount of payments received by him in excess of that reasonable value. Prior Counsel has filed a combined application for approval of compensation and response to the motion. For the following reasons, the court is not prepared to consider the motion at this time.

In order to assess the trustee's motion, the court will need to rule on Prior Counsel's application for approval of compensation. However, Prior Counsel has failed to apply for approval of compensation in compliance with applicable rules. First, he served his application and response only 14 days prior to this hearing date, and thus, failed to give at least 21 days' notice of the hearing, as required by Fed. R. Bankr. P. 2002(a)(6). Further, Prior Counsel served his application and response only on the United States Trustee, the debtors, and two of the three parties requesting special notice in this case. Thus, he failed to serve all creditors, as required by the same rule.

The court will continue the hearing on the United States Trustee's motion. Prior Counsel will be required to file a notice of continued hearing on his application for compensation, and to serve it on all creditors in this case. Prior Counsel is cautioned to serve all parties requesting special notice in this case, including the request at DN 52, at their designated addresses; to serve all creditors filing claims in this case at the addresses on their proofs of claim (Fed. R. Bankr. P. 2002(g)(1)); and to serve all creditors who have not filed claims in the case at their addresses on the debtors' schedules, including their amended Schedule G (Fed. R. Bankr. P. 2002(g)(2)). If the notice of continued hearing is

the only document served on creditors, the notice shall include sufficient information to comply with LBR 9014-1(d)(4), including the amounts of compensation sought for both pre- and post-petition services. Prior Counsel will also be required to serve the notice of continued hearing on the debtors, the United States Trustee, and the two creditors served with the original notice and motion. The court will continue the hearing a sufficient time to allow Prior Counsel to serve the notice of continued hearing pursuant to either LBR 9014-1(f)(1) or (f)(2), as Prior Counsel chooses.

The court will hear the matter.

16. 09-29162-D-11 SK FOODS, L.P.
DB-27

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DOWNEY BRAND, LLP FOR KELLY L POPE, CREDITOR COMM. ATY(S), FEES: $66,985.50, EXPENSES: $166.62
2-27-14 [4694]

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

Tentative ruling:

This is the fourteenth interim application for approval of fees and reimbursement of expenses filed by Downey Brand, LLP for services rendered to the creditors' committee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

17. 09-29162-D-11 SK FOODS, L.P.
SH-245

MOTION FOR COMPENSATION FOR BRADLEY D. SHARP, CHAPTER 11 TRUSTEE(S), FEES: $239,678.00, EXPENSES: $14,454.79
2-28-14 [4698]

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

Tentative ruling:

This is the thirteenth interim application for approval of fees and reimbursement of expenses filed by Bradley D. Sharp the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

18. 09-29162-D-11 SK FOODS, L.P.
SH-246

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNADER HARRISON SEGAL & LEWIS, LLP FOR GREGORY C. NUTI, TRUSTEE'S ATTORNEY(S), FEES: $909,018.50, EXPENSES: $61,361.02
2-28-14 [4702]

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

Tentative ruling:

This is the fourteenth interim application for approval of fees and reimbursement of expenses filed by Schnader Harrison Segal & Lewis, LLP for services rendered to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications for this applicant were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hearing the matter.

19. 09-29162-D-11 SK FOODS, L.P.
SH-247

MOTION FOR COMPENSATION FOR MARGARET ALLARS, SPECIAL COUNSEL(S), FEES: $16,721.25, EXPENSES: $1,672.12
2-28-14 [4710]

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

20. 09-29162-D-11 SK FOODS, L.P.
SH-248

MOTION FOR COMPENSATION FOR ANDREW BUCKLAND, SPECIAL COUNSEL(S), FEES: $42,223.99, EXPENSES: $0.00
2-28-14 [4714]

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

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Norton Rose Fulbright, Solicitors, on behalf of Andrew Buckland, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

21. 09-29162-D-11 SK FOODS, L.P.
SH-249

MOTION FOR COMPENSATION FOR PETER COLLINSON, SPECIAL COUNSEL(S), FEES: $145,446.40, EXPENSES: $0.00
2-28-14 [4718]

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

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Norton Rose Fulbright, solicitors, on behalf of Peter Collinson SC, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

22. 09-29162-D-11 SK FOODS, L.P.
SH-250

MOTION FOR COMPENSATION FOR DORAN COOK, SPECIAL COUNSEL(S), FEES: $3,603.60, EXPENSES: $0.00
2-28-14 [4722]

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

Tentative ruling:

This is the fourth interim application for approval of fees and reimbursement of expenses filed by Norton Rose, solicitors, on behalf of Doran Cook, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

23. 09-29162-D-11 SK FOODS, L.P.
SH-251

MOTION FOR COMPENSATION FOR MANNY GARANTZIOTIS, SPECIAL COUNSEL(S), FEES: $6,007.20, EXPENSES: $0.00
2-28-14 [4734]

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

24. 09-29162-D-11 SK FOODS, L.P.
SH-252

MOTION FOR COMPENSATION FOR BRUCE MARKELL, SPECIAL COUNSEL(S), FEES: $17,100.00, EXPENSES: $0.00
2-28-14 [4730]

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

25. 09-29162-D-11 SK FOODS, L.P.
SH-253

MOTION FOR COMPENSATION FOR DARYL WILLIAMS, SPECIAL COUNSEL(S), FEES: $14,264.25, EXPENSES: $0.00
2-28-14 [4726]

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

Tentative ruling:

This is the third interim application for approval of fees and reimbursement of expenses filed by Norton Rose Fulbright, Solicitors, on behalf of Daryl Williams, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

26. 09-29162-D-11 SK FOODS, L.P.
SH-254

MOTION FOR COMPENSATION BY THE LAW OFFICE OF NORTON ROSE FULBRIGHT FOR NORTON ROSE FULBRIGHT, SPECIAL COUNSEL(S), FEES: $500,972.10, EXPENSES: $0.00
2-28-14 [4738]

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

Tentative ruling:

This is the fifth interim application for approval of fees and reimbursement of expenses filed by Norton Rose Fulbright, Solicitors, barristers to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

27. 09-29162-D-11 SH-255 — SK FOODS, L.P. — MOTION FOR COMPENSATION FOR PLATINUM ADVISORS, LLC, CONSULTANT(S), FEES: $12,000.00, EXPENSES: $0.00 2-28-14 [4743]

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

Tentative ruling:

This is the first interim application for approval of fees and reimbursement of expenses filed by Platinum Advistors, LLC, consultants to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award of the fees requested. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

28. 14-21564-D-7 MS-1 — YEVGENIY ZAKHARNEV — MOTION TO AVOID LIEN OF AUTOMOTIVE FINANCE CORPORATION 2-20-14 [6]

Final ruling:

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

29. 13-35067-D-7 KSW-1 — VICTOR DOBBINS — MOTION FOR RELIEF FROM AUTOMATIC STAY 2-26-14 [16]

SETERUS, INC. VS.

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 debtor received his discharge on March 11, 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.

30. 12-20571-D-7 PRITPAUL SAPPAL — CONTINUED MOTION TO AVOID LIEN OF MILLER AND BECK
1-30-14 [166]

Final ruling:

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

31. 12-20571-D-7 PRITPAUL SAPPAL — CONTINUED MOTION TO AVOID LIEN OF CCM CORPORATION
1-30-14 [171]

Final ruling:

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

32. 12-36672-D-7 ROBYNN MCCANN — MOTION FOR RELIEF FROM AUTOMATIC STAY
KER-1
2-21-14 [93]

THE BANK OF NEW YORK MELLON
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. The debtor received her discharge on January 14, 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.

33. 13-32379-D-7 DIANE HORN — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-7-14 [20]

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.

34. 10-51390-D-7 GAR-1 — CURT/WENDY DOWHOWER — MOTION FOR RELIEF FROM AUTOMATIC STAY
2-20-14 [83]

NATIONSTAR MORTGAGE, LLC 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. The debtors received their discharge on March 14, 2011 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.

35. 13-21595-D-7 PA-7 — PATRICIA CUNNINGHAM — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH AMY SPARKS
3-5-14 [164]

Final ruling:

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

36. 14-20196-D-11 — LABOUR OF LOVE CHURCH OF GOD IN CHRIST — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
1-9-14 [1]

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

37. 14-20196-D-11 JWC-1 — LABOUR OF LOVE CHURCH OF GOD IN CHRIST — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 2-4-14 [19]

COMERICA BANK VS.

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

38. 13-33804-D-7 RSS-1 — RHONDA STIJAKOVICH-SANTILLI — MOTION TO SUBSTITUTE ATTORNEY 3-17-14 [31]

39. 13-24507-D-11 UST-2 — DKW PRECISION MACHINING INC. — CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 2-7-14 [77]

40. 13-24124-D-7 FF-1 — CHRISTOPHER BALAAM — MOTION TO COMPEL ABANDONMENT 3-19-14 [20]

Final ruling:

This is the debtor's motion to compel the trustee to abandon certain real property. The motion will be denied for the following reasons. First, the notice of hearing did not comply with the court's local rules. The moving party gave only 14 days' notice of the motion; thus, the moving party was required to advise potential respondents in the notice of hearing that no written opposition was

required (LBR 9014-1(f)(2)(C) and (d)(3)), which he did; however, the notice also stated, "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtor's attorney . . . as well as [the trustee and the United States Trustee]." Notice of Hearing, filed March 19, 2014, at 2:6-13. The notice concluded with this admonition: "If you or your attorney do not take these steps, the Court may decide that you do not oppose this action and may grant the Motion, in some circumstances without even conducting an actual hearing." Id. at 2:14-16. The steps described in the notice regarding the mailing of written opposition are not required by the local rules for a motion brought under LBR 9014-1(f)(2), and the admonition that the court may grant the motion "without even conducting an actual hearing" is plainly inaccurate. These directions and admonition may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice.

Second, the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. The proof of service states that the declarant certifies under penalty of perjury that she is over 18 years old and not a party to this action. The declarant "further certif[ies]," but not under penalty of perjury, the factual allegations as to service. This did not comply with the applicable statute.

Finally, the moving party failed to serve the U.S. Dept. of Education at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b). As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

41. 12-39434-D-7 TF-1 — ANTHONY/PAMELA BOSSERMAN — MOTION TO COMPEL ABANDONMENT 3-7-14 [143]

Tentative ruling:

This is the motion of creditor Larry Houghtby for an order authorizing the abandonment of certain real property. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, as a preliminary matter, the court notes that the proof of service of the motion was not signed under oath, as required by 28 U.S.C. § 1746. Thus, the court will require the moving party to file a corrected proof of service.

The court will hear the matter.

42. 13-35134-D-11 — HESS ROAD STORAGE LLC — ORDER TO SHOW CAUSE RE DISMISSAL 3-11-14 [36]

43. 14-21934-D-7 ASMA AHMAD
JWC-1

TRANSPORT FUNDING, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-18-14 [22]

44. 14-21547-D-7 JENNINE QUIRING
RJM-3

MOTION TO CONVERT CASE TO CHAPTER 13
3-19-14 [23]

45. 11-38457-D-7 DONALD GALKA
PA-7

MOTION 1) TO COMPROMISE CONTROVERSY WITH BRANDON HATFIELD AND THOMAS HATFIELD; 2) FOR AUTHORIZATION TO COMPENSATE PINO & ASSOC. AND WILCOXEN CALLAHAM, LLP FOR CONTINGENCY FEE AND COSTS, FEES: $3,600, EXP.: $444.30, ETC.
3-12-14 [61]

46. 09-29162-D-11 SK FOODS, L.P.

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-7-09 [1]

Final ruling:

This status conference is continued to April 16, 2014 at 10:00 a.m. No appearance is necessary.

47. 09-29162-D-11 SK FOODS, L.P. MOTION TO DISMISS CSSS, LP
10-2016 SH-18 3-14-14 [620]
SHARP ET AL V. SKF AVIATION,
LLC ET AL

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

48. 10-36676-D-7 SUNDANCE SELF-STORAGE-EL ORDER TO SHOW CAUSE RE:
13-2365 DORADO LP THIRD-PARTY COMPLAINT
ACEITUNO V. BROWN, III ET AL 3-14-14 [14]

49. 13-28369-D-7 EDWIN GERBER MOTION FOR COMPENSATION FOR
PA-8 MARK GORTON, BDRP ADVOCATE
O.S.T.
3-19-14 [158]

50. 13-35082-D-7 SANTAREJAI/DASHANNA BROWN MOTION TO CONFIRM TERMINATION
CSL-2 OR ABSENCE OF STAY
3-17-14 [69]

MINZHU TANG VS.

Final ruling:

This is the motion of creditor Minzhu Tang for an order confirming there is no automatic stay in effect in this case. The motion will be denied for the following reasons. First, the notice of hearing did not comply with the court's local rules. The moving party gave only 16 days' notice of the motion; thus, the moving party was required to advise potential respondents in the notice of hearing that no written opposition was required (LBR 9014-1(f)(2)(C) and (d)(3)), which the moving party did; however, the notice also stated, "If you mail your response to the Court for

filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtors' attorney . . . as well as [the trustee and the United States Trustee]." Notice of Hearing, filed March 17, 2014, p. 2. The notice concluded with this admonition: "If you or your attorney do not take these steps, the Court may decide that you do not oppose this action and may grant the Motion, in some circumstances without even conducting an actual hearing." Id. The steps described in the notice regarding the mailing of written opposition are not required by the local rules for a motion brought under LBR 9014-1(f)(2), and the admonition that the court may grant the motion "without even conducting an actual hearing" is plainly inaccurate. These directions and admonition may well have discouraged potential respondents – here, the debtors, who are pro se, from appearing at the hearing, and should not have been included in the notice.

Second, the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. The proof of service states that the declarant certifies under penalty of perjury that she is over 18 years old and not a party to this case. The declarant "further certif[ies]," but not under penalty of perjury, the factual allegations as to service, concluding that she "declares," but not under penalty of perjury, that the foregoing is true and correct. This did not comply with the applicable statute.

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