UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 20, 2016 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

1.	15-20600-D-11 MHK-10	SAEED ZARAKANI	CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU & KASSENBROCK FOR ANTHONY ASEBEDO, DEBTOR'S ATTORNEY(S) 2-22-16 [236]
2.	15-20600-D-11 MHK-11	SAEED ZARAKANI	CONTINUED MOTION TO DISMISS CASE 2-22-16 [231]

3.	15-20600-D-11 MHK-5	SAEED ZARAKANI	CONTINUED CONFIRMATION OF PLAN OF REORGANIZATION FILED BY DEBTOR 8-28-15 [142]
4.	15-20600-D-11 MHK-9	SAEED ZARAKANI	CONTINUED MOTION FOR APPROVAL OF POST-PETITION SECURED FINANCING 2-22-16 [226]
5.	15-24800-D-7 BM-1	DENNIS CURRIER	CONTINUED OPPOSITION TO TRUSTEE'S REPORT OF NO DISTRIBUTION BY BRIAN MORRISION 12-23-15 [40]
6.	16-20027-D-7 BN-1 THE GOLDEN 1 CREDIT UNION VS.	TIFFANI CO	MOTION FOR RELIEF FROM AUTOMATIC STAY 3-22-16 [22]

Final ruling:

This matter is resolved without oral argument. This is The Golden 1 Credit Union's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

7. 16-21649-D-7 MICHAEL LUEVANO
FF-1
Final ruling:

MOTION TO AVOID LIEN OF SUMMERSET AT BRENTWOOD IV ASSOCIATION
3-22-16 [9]

This is the debtor's motion to avoid an alleged judicial lien held by Summerset Brentwood IV Association (the "Association"). The motion will be denied for the following reasons.

First, the moving party failed to serve the Association in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Association (1) at a street address, with no attention line; and (2) through the attorneys who obtained the Association's abstract of judgment. The first method was insufficient because the rule requires that a corporation, partnership, or other unincorporated association be served to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line.

The second method was insufficient because the rule requires that a corporation, partnership, or other unincorporated association be served to the attention of an officer, managing or general agent, or agent authorized by appointment or by law to receive service of process, whereas there is no evidence the attorneys who obtained the abstract of judgment are authorized to receive service of process on behalf of the Association in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

Second, the moving party has failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate he is entitled to the relief requested, as required by LBR 9014-1(d)(6). Under California law, a judicial lien on real property is created by the recording of an abstract of judgment with the county recorder of the county in which the property is located. Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a). The debtor has submitted a copy of an abstract of judgment recorded in Contra Costa County, whereas the property as to which the debtor seeks to avoid the alleged lien is in Placer County. Thus, there is no evidence of a judicial lien held by the Association, as created by an abstract of judgment recorded in the county in which the debtor's property is located, and no evidence there is a judicial lien that is subject to avoidance. Thus, the debtor has not established that he is entitled to relief under § 522(f)(1)(A).

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

8. 13-25654-D-7 KENNETH/APRIL GOORE
HSM-4

MOTION TO SELL AND/OR MOTION TO PAY
3-16-16 [71]

9. 16-21058-D-7 MICHAEL GARRETT — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
3-8-16 [23]

10. 14-27460-D-7 FRANCISCO NAVARRO — MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE AND BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S)
SCB-2
3-18-16 [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.

11. 15-28060-D-11 ACADEMY OF PERSONALIZED LEARNING, INC. — MOTION FOR COMPENSATION BY THE LAW OFFICE OF ABDALLAH LAW GROUP, P.C. FOR MITCHELL L. ABDALLAH, DEBTOR'S ATTORNEY(S)
MLA-7
3-23-16 [249]

Tentative ruling:

This is the application of Abdallah Law Group, P.C., for compensation. The court is not prepared to consider the application because it was not properly served. The applicant failed to serve (1) Columbia Elementary School District and OPS, listed on Schedule G; and (2) at least nine of the creditors added to Schedule F by amendment filed April 6, 2016, as required by Fed. R. Bankr. P. 2002(a)(6). The court notes that the debtor's counsel has been put on notice by at least two rulings in this case, going back to November 18, 2015, that Columbia Elementary School District and OPS were not on the PACER service list, yet the debtor has failed to add them.

As a result of these service defects, the hearing will be continued to May 4, 2016, at 10:00 a.m., the applicant to file a notice of continued hearing and serve it on the creditors listed above. The court will hear the matter.

12.	15-28060-D-11 MLA-8	ACADEMY OF PERSONALIZED LEARNING, INC.	MOTION FOR COMPENSATION FOR FEDDERSEN AND COMPANY, LLP, ACCOUNTANT(S) 3-23-16 [262]

Tentative ruling:

This is the application of Feddersen and Company, LLP, for compensation. The court is not prepared to consider the application because it was not properly served. The applicant failed to serve (1) Columbia Elementary School District and OPS, listed on Schedule G; and (2) at least nine of the creditors added to Schedule F by amendment filed April 6, 2016, as required by Fed. R. Bankr. P. 2002(a)(6). The court notes that the debtor's counsel has been put on notice by at least two rulings in this case, going back to November 18, 2015, that Columbia Elementary School District and OPS were not on the PACER service list, yet the debtor has failed to add them.

In addition, for the applicant's guidance, any further application shall address the following issues. The application raises an issue under In re THC Fin. Corp., 837 F.2d 389 (9th Cir. 1988), which held that "a retroactive award of fees for services rendered without court approval . . . should be limited to exceptional circumstances where an applicant can show both a satisfactory explanation for the failure to receive prior judicial approval and that he or she has benefited the bankrupt estate in some significant manner." 837 F.2d at 392. As another bankruptcy judge in this district has observed in this situation, "exceptional means exceptional." In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 231 (Bankr. E.D. Cal. 1988). "Mere negligence is not sufficient . . . ." Id., citing In re Downtown Inv. Club III, 1988 Bankr. LEXIS 925, *10-11 (9th Cir. BAP 1988). The burden of proof is on the applicant; the decision is within the court's discretion. B.E.S. Concrete, 93 B.R. at 231.

The debtor's petition was filed October 15, 2015. Although the application states that it covers the period October 15, 2015 through February 29, 2016, the actual period, according to the applicant's time records, is June 4, 2015 through November 30, 2015. Thus, the time records cover both pre- and post-petition time periods.[1] The The applicant's employment application, however, was not filed until December 16, 2015. It is the court's practice to award fees for services performed in the 30-day period leading up to the date the employment application is filed without a THC Fin. showing; in this case, that would include the fees for services performed beginning November 17, 2015. The gross amount of fees incurred during that 30-day period; that is, the amount based on the applicant's standard hourly rates and without reduction on account of the agreed-to annual cap, was $3,368,[2] whereas the applicant is seeking $6,285. Thus, the applicant is seeking $2,719 in fees for services performed more than 30 days before its employment application was filed, whereas the applicant has made no showing that such a retroactive award is appropriate under the THC Fin. standards.[3]

In fact, this analysis gives the applicant the benefit of the doubt because it is based on the full amount of the fees incurred on a lodestar basis; that is, the full amounts billed at the applicant's standard hourly rates, and not as reduced to a pro rata share of the agreed annual cap. The second column in the time records discloses that if the annual cap is applied to all the services performed between June 4, 2015 and November 30, 2015, the amount charged during the 30-day period prior to the filing of the employment application was only $803.16.

Finally, the applicant's invoice # 418 (Ex. B, p. 4) indicates the applicant received $1,500 at some time prior to February 29, 2016. The order authorizing the applicant's employment states that compensation is subject to the $10,985 cap, reduced by a pre-petition payment of $4,700 to a revised post-petition cap of $6,285. The applicant will need to explain why, if $1,500 was paid post-petition, the amount now sought is $6,285 and not $4,785.

As a result of the above service and substantive defects, the court intends to deny the application by minute order without prejudice.

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1 The issue of the applicant's pre-petition employment by the debtor came up in connection with its employment application, when the court discovered in the supporting exhibits that the applicant had been performing services for the debtor since 2013. (The application and supporting declaration made no mention of any pre-petition connection with the debtor.)

2 The applicant was retained by the debtor in February of 2013 to audit the statements of the debtor's financial position as of June 30, 2013; June 30, 2014; and June 30, 2015, subject to an annual cap of $10,985 for fees and costs. The applicant's time entries, Exhibit B to the present application, include a column headed "Std Amount" and one headed "Bill Amount." The first of these contains figures reflecting the standard hourly rates of the individuals who performed the services multiplied by the actual time spent; that is, the first of these two columns reflects the charges based on a "lodestar" rate. The second column includes the figures from the first column multiplied by approximately 23.84%, which is the portion of the total fees available when the annual cap is applied to all of the services on a pro rata basis.

3 The present application states that the applicant's employment was approved effective October 15, 2016. There is no such provision in the employment order (DN 222), and the court would not have approved such a provision absent a satisfactory showing as to the THC Fin. factors.

13.	15-28060-D-11 RAL-6	ACADEMY OF PERSONALIZED LEARNING, INC.	MOTION FOR COMPENSATION BY THE LAW OFFICE OF TRODELLA & LAPPING, LLP FOR RICHARD A. LAPPING, DEBTOR'S ATTORNEY(S) 3-23-16 [256]

Tentative ruling:

This is the application of Trodella & Lapping LLC for compensation. The court is not prepared to consider the application because it was not properly served. The applicant failed to serve (1) Columbia Elementary School District and OPS, listed on Schedule G; and (2) at least nine of the creditors added to Schedule F by amendment filed April 6, 2016, as required by Fed. R. Bankr. P. 2002(a)(6). The court notes that the debtor's counsel has been put on notice by at least two rulings in this case, going back to November 18, 2015, that Columbia Elementary School District and OPS were not on the PACER service list, yet the debtor has failed to add them.

As a result of these service defects, the court intends to continue the hearing to May 4, 2016, at 10:00 a.m., and the applicant is to file a notice of continued hearing and serve it on the creditors listed above. The court will hear the matter.

14.	15-28060-D-11 SKB-2	ACADEMY OF PERSONALIZED LEARNING, INC.	MOTION FOR COMPENSATION BY THE LAW OFFICE OF YOUNG, MINNEY AND CORR, LLP FOR SARAH KALAS BANCROFT, SPECIAL COUNSEL 3-23-16 [269]

Tentative ruling:

This is the application of Young, Minney & Corr LLP for compensation. The court is not prepared to consider the application because it was not properly served. The applicant failed to serve (1) Columbia Elementary School District and OPS, listed on Schedule G; and (2) at least nine of the creditors added to Schedule F by amendment filed April 6, 2016, as required by Fed. R. Bankr. P. 2002(a)(6). The court notes that the debtor's counsel has been put on notice by at least two rulings in this case, going back to November 18, 2015, that Columbia Elementary School District and OPS were not on the PACER service list, yet the debtor has failed to add them.

In addition, for the applicant's guidance, any further application shall address the following issues. First, the time records contain so much redaction that the court would be completely unable to make a determination as to the reasonableness of the fees. The names of virtually all individuals the applicant's attorneys spoke with, exchanged emails with, and met with are redacted. The subject matter of virtually all the legal research performed is redacted. Further, there is a large amount of "block" billing, or "lumping" of several different services into one time entry, such that the court has no way to determine whether the amount of time spent on each discrete task was reasonable. Further, the time records do not identify the individuals who performed the services, and the moving papers provide the court with no information on which assess the reasonableness of their hourly rates.

The application also raises an issue under In re THC Fin. Corp., 837 F.2d 389 (9th Cir. 1988), which held that "a retroactive award of fees for services rendered without court approval . . . should be limited to exceptional circumstances where an applicant can show both a satisfactory explanation for the failure to receive prior judicial approval and that he or she has benefitted the bankrupt estate in some significant manner." 837 F.2d at 392. As another bankruptcy judge in this district has observed in this situation, "exceptional means exceptional." In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 231 (Bankr. E.D. Cal. 1988). "Mere negligence is not sufficient . . . ." Id., citing In re Downtown Inv. Club III, 1988 Bankr. LEXIS 925, *10-11 (9th Cir. BAP 1988). The burden of proof is on the applicant; the decision is within the court's discretion. B.E.S. Concrete, 93 B.R. at 231.

The debtor's petition was filed October 15, 2015. The time period covered by the time records is October 16, 2015 through February 29, 2016. The The applicant's employment application, however, was not filed until December 1, 2015. It is the court's practice to award fees for services performed in the 30-day period leading up to the date the employment application is filed without a THC Fin. showing; in this case, that would include the fees for services performed beginning November 1, 2015. During the earlier period, October 16 – 31, 2015, the applicant billed a total of $15,078. Thus, the applicant is seeking $15,078 in fees for services performed more than 30 days before its employment application was filed, whereas the applicant has made no showing that such a retroactive award is appropriate under the THC Fin. standards.[1]

Finally, the applicant's employment application disclosed that the applicant has a $31,733.26 pre-petition claim.[2] In contrast, the applicant's invoice dated November 4, 2015 shows total new charges of $15,078, a previous balance of $53,818.34, a payment of $51,192.31 received October 13, 2015 (two days prior to the filing of the petition), and a "5% rate discount" of $2,626.03. The debtor's payment and the discount satisfied the previous balance in full, leaving a new balance due of only $15,078, all of which was incurred after the petition date, October 15, 2015. The applicant will need to explain the $31,733.26 pre-petition claim referred to in its employment application.

As a result of the above service and substantive defects, the court intends to deny the application by minute order without prejudice.

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1 The present application states that the applicant's employment was approved effective October 15, 2016. There is no such provision in the employment order (DN 223), and the court would not have approved such a provision absent a satisfactory showing as to the THC Fin. factors.

2 Because it holds a pre-petition claim, the firm is employed under § 327(e) of the Code.

15.	14-20064-D-7 BHS-5	GLENN GREGO	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH GLENN GREGO, THE OSCAR GREGO LIVING TRUST AND PACIFIC WESTERN BANK 3-21-16 [613]

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

16.	14-20064-D-7 BHS-6	GLENN GREGO	MOTION TO ABANDON 3-21-16 [619]

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

17. 16-20266-D-7 ROSANNA MAGNISI — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 3-10-16 [22]
SETERUS, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Seterus, Inc.'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.

18. 15-27967-D-7 WILLA RHODES — MOTION TO DISMISS ADVERSARY PROCEEDING
15-2234 LSB-1 — 3-23-16 [15]
RHODES V. U.S. BANK NATIONAL ASSOCIATION ET AL

Tentative ruling:

This is the motion of defendants U.S. Bank National Association and Specialized Loan Servicing, LLC (collectively, the "defendants"), to dismiss this adversary proceeding with prejudice. The plaintiff has filed opposition. For the following reasons, the motion will be granted.

The plaintiff, who is the debtor in the chapter 7 case in which this adversary proceeding is pending (the "debtor"), filed successive chapter 13 cases in 2010, 2011, and 2012. The debtor voluntarily converted the last one to chapter 7 and received a discharge on April 2, 2013. On February 7, 2014, the debtor filed suit in San Joaquin County Superior Court against the defendants and others. The debtor's complaint in that action is virtually identical to her complaint in this adversary proceeding. The defendants and a co-defendant removed the action to the federal district court for this district, where, on motion of the defendants and their co-defendant, which the debtor opposed, the magistrate judge made the following findings and conclusions:

> **[P]laintiff's claims arise from defendants' alleged fraudulent and unlawful acts in originating plaintiff's loan, negotiating a potential refinancing of the loan, assigning the deed of trust to defendant U.S. Bank, and recording the notice of default and notice of trustee's sale. Thus, plaintiff's claims accrued no later than April 2, 2012, when the notice of trustee's sale was recorded. Since plaintiff filed her last petition for bankruptcy approximately two weeks later, on April 17, 2012, her claims constitute pre-petition causes of action, and thus became a part of the bankruptcy estate. Furthermore, because plaintiff failed to schedule any of her claims, the claims did not revert to plaintiff upon discharge and closing of her bankruptcy case. As such, plaintiff lacks standing to bring the claims asserted in her complaint.**

Defendants' Ex. 1, 6:10-19 (citations omitted).

The debtor filed objections to the magistrate judge's proposed findings and recommendations, but the district court judge adopted them and dismissed the action with prejudice by order filed March 5, 2015. The debtor did not appeal. On October 13, 2015, the debtor filed her current chapter 7 case, and on December 9, 2015, she filed her adversary complaint. In the chapter 7 case, she listed no creditors other than the defendants. Thus, as the debtor has no possibility of receiving a discharge in the current case and no other debts to discharge or restructure, it appears she filed the case for the sole purpose of getting a second bite at the apple after her loss in district court.

The defendants contend this adversary proceeding must be dismissed based on the doctrine of claim preclusion, previously known as res judicata. The court is not convinced. The Bankruptcy Appellate Panel has recently held that where a prior action was dismissed for lack of standing, the dismissal was not "on the merits" for purposes of claim preclusion. Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 2016 Bankr. LEXIS 242, *25-26 (9th Cir. BAP Jan. 26, 2016). Nevertheless, the court agrees with the magistrate judge that the debtor's claims against the defendants accrued by April 2, 2012 at the latest, when the notice of trustee's sale was filed. As the debtor filed her bankruptcy petition two weeks later, the claims accrued pre-petition and became property of her bankruptcy estate. Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001). Because she did not schedule the claims, they remained property of the estate in that case when the case was closed, and they remain so today. Section § 554(c) and (d) of the Bankruptcy Code; Cusano, 264 F.3d at 945-46. As a result, the debtor has no standing to pursue the claims. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004).

Because the claims the debtor purports to state in her complaint are claims that belong to the bankruptcy estate in her 2012 case, amendment of the complaint would be futile, and leave to amend will be denied. See Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1051 (9th Cir. 2008) ["Dismissal without leave to amend is proper if it is clear that the complaint could not be saved by amendment."]. Finally, the court agrees with the magistrate judge's conclusions that (1) dismissal of the complaint as to all the defendants, not just the two that brought this motion, is appropriate because the debtor's claims against all the defendants are integrally related, and (2) the court may dismiss as to all the defendants sua sponte and without notice to the debtor, because "the [debtor] cannot possibly win relief." See Defendants' Ex. 1, at 7:4, quoting Omar v. Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987).

For the reasons stated, the motion will be granted and the complaint will be dismissed with prejudice as to all the defendants. The court will hear the matter.

19. 11-42673-D-11 LINDA ROCK
15-2212
CAMARA V. ROCK

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-22-16 [16]

20. 11-42673-D-11 LINDA ROCK
15-2212 CAH-1
CAMARA V. ROCK

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
1-12-16 [10]

Tentative ruling:

This is the defendant's motion to dismiss the plaintiff's complaint in this adversary proceeding. The motion was brought on two grounds: (1) that the plaintiff had failed to join an indispensable party; and (2) that the complaint is time-barred. The plaintiff filed opposition. By minute order filed March 24, 2016, another department of this court ruled on the second issue, ordering that "the action is timely filed as permitted by 11 U.S.C. Section 523(a)(15) and FRBP 4007(b)." Civil Minute Order, DN 26. As to the remainder of the motion, the hearing was continued to this date.

On April 8, 2016, the defendant filed a "notice to withdraw" the motion. As to the second issue, the timeliness issue, the motion has already been denied, and the court will not disturb that ruling. As to the first issue, because the plaintiff has filed opposition, the defendant is not in a position to unilaterally withdraw the motion. Fed. R. Civ. P. 41(a), incorporated herein by Fed. R. Bankr. P. 7041 and 9014(c). Thus, the court will hear from the plaintiff.

21. 15-28774-D-7 OTASHE GOLDEN
TGM-1

CONTINUED OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO DISTRIBUTION FILED BY DAMERON HOSPITAL ASSOCIATION
1-15-16 [19]

Final ruling:

This is the objection of Dameron Hospital Association to the trustee's report of no distribution. Since the objection was originally heard, the trustee has filed a Notice to File Proof of Claim Due to Possible Recovery of Assets and has hired counsel. As a result, the objection will be overruled as moot by minute order. No appearance is necessary.

22. 16-21180-D-7 SARAH LAVERONE
MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
3-23-16 [11]

23. 16-21381-D-7 CATHY DUVALL
KAZ-1
THE BANK OF NEW YORK MELLON VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-16 [11]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion 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.

24. 16-21086-D-7 JESUS/MONICA MARTINEZ
RDW-1
TECHNOLOGY CREDIT UNION VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
3-16-16 [13]

25. 13-24789-D-7 RONALD/NICOLE TILLMAN
WOLLEMI ACQUISITIONS, LLC VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
3-21-16 [148]

Final ruling:

The motion is denied for the following reasons: (1) moving party failed to file the proof of service as a separate document as required by LBR 9014-1(e)(3); (2) moving party failed to file a separate Relief from Stay Summary Sheet (Form EDC 3-468) as required by LBR 9014-1; and (3) moving party has failed to include an appropriate docket control number as required by LBR 9014-1(c). As a result of these procedural, the court will deny the motion by minute order. No appearance is necessary.

26. 15-29890-D-11 REO-1 — GRAIL SEMICONDUCTOR — MOTION TO EMPLOY ROBERT E. OPERA AS ATTORNEY 3-22-16 [165]

Final ruling:

The hearing on this motion is continued to April 21, 2016 at 9:00 a.m. No appearance is necessary on April 20, 2016.

27. 14-25816-D-11 DNL-58 — DEEPAL WANNAKUWATTE — MOTION TO APPROVE SALE OF ESTATE PROPERTY AND/OR MOTION TO AUTHORIZE ABANDONMENT OF PROPERTY 3-29-16 [975]

Tentative ruling:

This is the trustee's motion for approval of the sale of the estate's interest in certain real property, or in the alternative, to abandon the property. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has preliminary questions.

According to the motion, the trustee agreed that co-owner Tom Bates could list the property provided he "assume full responsibility for any broker's commission." However, according to the proposed settlement statement filed as an exhibit, commissions of $33,600 (which is 6% of the purchase price) will be deducted from the gross sale proceeds. (See Trustee's Ex. C, p. 2.) Thus, it appears the estate is, in practical terms, paying half the commissions.

Similarly, the $4,046 for the second installment of 2015-2016 property taxes is shown on the settlement statement as being paid by the sellers out of escrow (Trustee's Ex. C, p. 2), whereas, according to the motion, the $4,046 "is expected to be paid from Mr. Bates' house account or from escrow." As the $4,046 represents the second installment for 2015-2016, which the trustee acknowledges in the motion was due and delinquent on April 10, 2016, it seems likely Mr. Bates will have chosen to pay the taxes from the house account. This would reduce the remaining balance in the house account, which is to be turned over to the estate at closing (and which is the only benefit the estate will receive from the transaction apart from being relieved of the burdens associated with owning the property). Will the estate then be reimbursed the $4,046 from the escrow? If either the real estate commissions or the timely payment of the property taxes will reduce the estate's recovery from the sale, those circumstances should have been made clear in the motion, but were not.

Next, the trustee seeks, as an alternative to approval of the sale, to abandon the property "and that Debtors' motion to sell the Property be approved so they can consummate the sale of the Property free of bankruptcy restrictions." Mot. at 8:7-8. The debtors have not filed a motion to approve the sale, and the trustee has offered no authority for the proposition that the court would have jurisdiction to approve the debtors' sale of the property once it is abandoned by the estate.

Finally, it appears this motion is really a motion to approve a compromise with co-owner Tom Bates. The estate is to receive nothing from the sale proceeds; instead, it will receive whatever remains in Mr. Bates' house account when the sale closes. It appears, although the motion does not state, that the sale of the real

property and the payment of the house account balance to the trustee will resolve all of the issues between the estate, on the one hand, and Mr. Bates, on the other hand, with respect to their respective ownership interests in the property and the funds in the house account. When the debtors and Mr. Bates purchased the property in 2005, the debtor paid a 20% down payment and Mr. Bates acquired his 50% interest in exchange for his agreement to manage the property. The motion states Mr. Bates has managed the property for more than 11 years, and where the rents have been insufficient to pay all expenses, "Mr. Bates has paid [them] from his own personal earnings as a public middle school special education teacher." Mot. at 4:10-11.

The court recognizes the real property has no equity for the estate and that the sale will result in the estate being relieved of the obligations associated with the property, such that the only real asset available for the estate in connection with the real property is the funds remaining in the house account. However, it appears the trustee is compromising the estate's claims against Mr. Bates, and therefore, the motion should have been noticed and analyzed as a motion to approve a compromise, as well as a motion to approve a sale. See Simantob v. Claims Prosecutor, L.L.C. (In re Lahijani), 325 B.R. 282, 290 (9th Cir. BAP 2005).

The court will hear the matter.

28.	10-47422-D-7 HSM-7	DENNIS/SHERYL LANCASTER	MOTION TO RESERVE ASSETS UPON CLOSING OF THE CASE 4-5-16 [112]

29.	14-22526-D-7 PA-10	DAVID JONES	CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 6-1-15 [130]

Final ruling:

This objection has been resolved by stipulated order entered on April 5, 2016. Matter removed from calendar.

30. 10-47536-D-7 DOUGLAS KIRKWOOD
CDH-5

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
3-16-16 [99]

Tentative ruling:

This is the trustee's motion for approval of an administrative expense to be paid to the debtor. The hearing was continued for the moving party to address certain apparent service defects noted by the court in a tentative ruling. Specifically, (1) the moving party had failed to serve Aaron Koenig, who, it appeared to the court, is the debtor's attorney; and (2) the service list referred to in the proof of service was not attached to it. The moving party's counsel stated at the initial hearing that Aaron Koenig is not the debtor's attorney, having substituted out. That appears to be an incorrect statement. According to the court's docket, Mr. Koenig substituted out as the debtor's attorney in May of 2011 (DN 35), but substituted back in as the debtor's attorney in February of 2015 (DN 85). There is nothing in the record to indicate Mr. Koenig is not the debtor's attorney of record today.

As for the missing service list, the debtor's counsel's paralegal has filed a declaration in which she testifies she remembers serving the notice and has verified they have been charged $30.39 for mailing costs, which included the cost of $11.04 for the creditors listed on the service list. Counsel's paralegal has also filed a supplemental proof of service that includes the service list she used. However, the service list discloses that the moving party failed to serve the IRS and the Franchise Tax Board, listed on the debtor's Schedule E. Further, the service list confirms that the moving party failed to serve Mr. Koenig.

If requested, the court will continue the hearing once again to permit the moving party to file a notice of continued hearing and serve it on the IRS and the Franchise Tax Board and to serve all the moving papers on the debtor's attorney, Mr. Koenig, along with the notice of continued hearing. The court will hear the matter.

31. 10-47536-D-7 DOUGLAS KIRKWOOD
CDH-4

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES LAW CORPORATION FOR CHRISTOPHER HUGHES, TRUSTEES ATTORNEY(S)
3-16-16 [94]

Tentative ruling:

This is the motion of the trustee's counsel for approval of compensation. The hearing was continued for the moving party to address certain apparent service defects noted by the court in a tentative ruling. Specifically, (1) the moving party had failed to serve Aaron Koenig, who, it appeared to the court, is the debtor's attorney; and (2) the service list referred to in the proof of service was not attached to it. The moving party's counsel stated at the initial hearing that Aaron Koenig is not the debtor's attorney, having substituted out. That appears to be an incorrect statement. According to the court's docket, Mr. Koenig substituted out as the debtor's attorney in May of 2011 (DN 35), but substituted back in as the debtor's attorney in February of 2015 (DN 85). There is nothing in the record to indicate Mr. Koenig is not the debtor's attorney of record today.

As for the missing service list, the debtor's counsel's paralegal has filed a declaration in which she testifies she remembers serving the notice and has verified they have been charged $30.39 for mailing costs, which included the cost of $11.04 for the creditors listed on the service list. Counsel's paralegal has also filed a supplemental proof of service that includes the service list she used. However, the service list discloses that the moving party failed to serve the IRS and the Franchise Tax Board, listed on the debtor's Schedule E. Further, the service list confirms that the moving party failed to serve Mr. Koenig.

If requested, the court will continue the hearing once again to permit the moving party to file a notice of continued hearing and serve it on the IRS and the Franchise Tax Board and to serve all the moving papers on the debtor's attorney, Mr. Koenig, along with the notice of continued hearing. The court will hear the matter.

32. 10-47536-D-7 DOUGLAS KIRKWOOD
MDM-2

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF MELLEN LAW FIRM FOR MATTHEW D. MELLEN, SPECIAL COUNSEL(S)
3-16-16 [103]

Tentative ruling:

This is the motion of the trustee's special counsel for compensation. The hearing was continued for the moving party to address certain apparent service defects noted by the court in a tentative ruling. Specifically, (1) the moving party had failed to serve Aaron Koenig, who, it appeared to the court, is the debtor's attorney; and (2) the service list referred to in the proof of service was not attached to it. The moving party's counsel stated at the initial hearing that Aaron Koenig is not the debtor's attorney, having substituted out. That appears to be an incorrect statement. According to the court's docket, Mr. Koenig substituted out as the debtor's attorney in May of 2011 (DN 35), but substituted back in as the debtor's attorney in February of 2015 (DN 85). There is nothing in the record to indicate Mr. Koenig is not the debtor's attorney of record today.

As for the missing service list, the debtor's counsel's paralegal has filed a declaration in which she testifies she remembers serving the notice and has verified they have been charged $30.39 for mailing costs, which included the cost of $11.04 for the creditors listed on the service list. Counsel's paralegal has also filed a supplemental proof of service that includes the service list she used. However, the service list discloses that the moving party failed to serve the IRS and the Franchise Tax Board, listed on the debtor's Schedule E. Further, the service list confirms that the moving party failed to serve Mr. Koenig.

If requested, the court will continue the hearing once again to permit the moving party to file a notice of continued hearing and serve it on the IRS and the Franchise Tax Board and to serve all the moving papers on the debtor's attorney, Mr. Koenig, along with the notice of continued hearing. The court will hear the matter.

33. 14-20064-D-7 GLENN GREGO
15-2231 BHS-1
GREGO V. WHATLEY ET AL

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
12-30-15 [10]

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

34. 16-21765-D-7 DEBORAH ELLER
SBM-1
WELLS FARGO BANK, NATIONAL ASSOCIATION VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-6-16 [11]

35. 15-28370-D-7 JOHN COOKE
JAC-2

MOTION TO CONVERT CASE TO CHAPTER 13
3-8-16 [18]

36. 15-27387-D-7 JOSE/JOSEFINA PALOMINO
HDP-2
TRINITY FINANCIAL SERVICES, LLC VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-28-16 [87]

37. 16-20635-D-7 LISA GARCIA
GMW-2

MOTION TO SET ASIDE DISMISSAL OF CASE
4-6-16 [25]

DEBTOR DISMISSED: 03/07/2016

Tentative ruling:

This is the debtor's motion to set aside the order dismissing this case. This 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.

The case was dismissed on March 7, 2016 because no attorney's disclosure statement had been filed within the time allowed by the February 22, 2016 order extending the deadline. The debtor's attorney testifies the failure to file an attorney's disclosure statement was inadvertent in that his secretary of 31 years had recently retired and, until recently, he had not personally handled the filing of bankruptcy cases. He states he had prepared the attorney's disclosure statement but did not realize it had not been filed.

He adds that on or about March 8 (the day after the case was dismissed), he received notice the case had been dismissed. He inquired as to why and was told the case had been dismissed for failure to file an attorney's disclosure statement. However, he did not then file an attorney's disclosure statement (and has not since filed one) or a motion to set aside the order dismissing the case. The debtor and her counsel had attended the meeting of creditors on March 7, the day the case was dismissed. As the trustee had not been able to review the debtor's schedules and statements (filed March 3), the trustee continued the meeting to March 21. By that time, and in fact, by about March 8, the debtor's counsel was aware the case had been dismissed. Yet he and the debtor attended the continued meeting on March 21, and the trustee held and concluded the meeting, issuing a report of no distribution two days later.

The problem is that creditors were served with the order dismissing the case on March 9 (DN 23), and therefore, would have had no reason to attend the continued meeting of creditors on March 21. The debtor's counsel has failed to explain why he apparently did not request another continuance of the meeting when he knew the case had been dismissed. He has also failed to explain why he waited a month after the case was dismissed before filing a motion to set aside the dismissal.

For the reasons stated, the court will grant the motion provided the Clerk resets the meeting of creditors and the debtor's counsel notices all creditors of the rescheduled meeting of creditors and, further, the debtor consents to extending the dates to object to discharge or dischargeability for 60 days following conclusion of the meeting of creditors. Otherwise, the court intends to deny the motion. The court will hear the matter.