

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

April 22, 2014 at 9:32 A.M.

1. 14-21400-B-7 CHARLES LANDAU AND JAMES TRUSTEE'S MOTION TO DISMISS FOR
TAA-1 RICHARDS FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
3-25-14 [23]

Tentative Ruling: None.

2. [14-20918](#)-B-7 KUM KANG CONTINUED MOTION TO COMPEL
MKJ-1 ABANDONMENT
2-22-14 [[10](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 554(b), the debtor's interest in the business name Fresh Cleaners and goodwill associated therewith (Schedule B, line 13), three sewing machines, two counters, one overhead conveyor, one cash register, tables, and iron and steamer and furniture (Schedule B, line 29) (collectively, the "Property") are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Property is of inconsequential value and benefit to the estate. The debtor has claimed all of the Property as entirely exempt on Schedule C.

The court will issue a minute order.

3. [13-31022](#)-B-7 KATHLEEN DEEGAN MOTION TO COMPEL ABANDONMENT
HDR-1 3-19-14 [[65](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 554(b), the debtor's

interests in real property located at 1412 Yukon Street, Davis California (the "Yukon Street Property"), a one-week timeshare in 75 Snowflake Drive, Brechenridge, Oregon (the "Timeshare") and all personal property listed on Schedule B (the "Personal Property") are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Yukon Street Property has a value of \$522,000.00 and is encumbered by secured debt in the amount of approximately \$559,000.00. The debtor alleges without dispute that the Timeshare has a value of \$6,000.00, all of which she has claimed as exempt. As for the Personal Property, which consists of various items listed on Schedule B, debtor has either claimed the items as entirely exempt or has claimed any equity in the items above the amount of secured claims as exempt. The Yukon Street Property, the Timeshare and the Personal Property are of inconsequential value and benefit to the estate.

The court will issue a minute order.

4. [13-35731](#)-B-7 PAUL KEITHLY JR. AND MOTION TO AVOID LIEN OF
JM-2 KIMBERLY KEITHLY CITIBANK, N.A.
2-26-14 [[27](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

5. [13-25643](#)-B-7 TODD/CHRISTINE DUPONT MOTION TO COMPEL ABANDONMENT
MDA-2 4-8-14 [[51](#)]

Tentative Ruling: The motion is dismissed without prejudice.

This motion for abandonment of real property located at 1532 Blackhawk Street, Roseville, California must be served on all creditors. While the motion is technically brought under FRBP 6007(b), creditors and the United States trustee are entitled to the same notice that they would receive if the motion were brought by the trustee. First Carolina Fin. Corp. v. Trustee of Estate of Caron (In re Caron), 50 B.R. 27 (Bankr. N.D. Ga. 1984); In re Wideman, 84 B.R. 97 (Bankr. W.D. Tex. 1988).

In this case, the proof of service filed by the debtors (Dkt. 54) states that the debtors served the motion and its supporting papers on parties listed on a mailing matrix. However, no such matrix is attached to the proof of service. As a result, the court cannot verify whether the debtors served the motion on all creditors.

The court will issue a minute order.

6. [13-20644](#)-B-7 PERRY YUEN
DNL-6

MOTION TO EMPLOY GONZALES &
SISTO, LLP AS ACCOUNTANT(S)
3-17-14 [[409](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 327(a) and Fed. R. Bankr. P. 2014, the chapter 7 trustee is authorized to employ Gonzales and Sisto, LLP, ("G&S") as accountants for the bankruptcy estate for the purpose of performing tax-related accounting and income tax preparation for the 2013 and 2014 tax years. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the trustee is authorized to pay G&S a flat fee in the amount of \$2,500.00, to be paid upon the completion of services as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

The court finds that G&S is a disinterested person as that term is defined in 11 U.S.C. § 101(14). The court finds that the approved fees are reasonable compensation for actual and necessary services.

The court will issue a minute order.

7. [14-22144](#)-B-7 DENNIS MARSHALL AND
RSG-1 VANESSA LOCK-MARSHALL

MOTION TO COMPEL ABANDONMENT
3-21-14 [[9](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to May 6, 2014, at 9:32 a.m.

As the personal property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Fed. R. Bankr. P. 4003(b)(1) has expired.

The court will issue a minute order.

8. [09-21751](#)-B-13 KRISTINE BOWEN
[14-2057](#) RVD-1
BOWEN V. FEUTZ ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING
3-20-14 [[11](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is deemed submitted on the papers. The court will issue a written disposition and order.

9. [13-25948](#)-B-7 ROBERTO CAMACHO MOTION BY THOMAS P. HOGAN TO
[13-2248](#) WITHDRAW AS ATTORNEY
RIGGS V. CAMACHO 4-3-14 [[41](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed without prejudice.

This motion was improperly set for hearing under LBR 9014-1(f)(2). The court's local rules require that motions filed in adversary proceedings must be filed under LBR 9014-1(f)(1), which requires that the motion be filed and served no less than 28 days before the date of the hearing and that the notice of hearing apprise the respondent party that written opposition to the motion is required. LBR 9014-1(f)(2)(A). Failure to comply with the court's local rules is grounds for dismissal of the motion. LBR 1001-1(g).

The court will issue a minute order.

10. [14-21151](#)-B-7 ELIODORO TEJEDA AND MOTION TO AVOID LIEN OF
RDG-1 MARTHA GUEVARA DISCOVER BANK
4-2-14 [[17](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

11. [14-21151](#)-B-7 ELIODORO TEJEDA AND MOTION TO AVOID LIEN OF
RDG-2 MARTHA GUEVARA PORTFOLIO RECOVERY ASSOCIATES,
LLC
4-2-14 [[23](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

Tentative Ruling: This motion continued from March 25, 2014. The court established a briefing schedule. The debtor's filed timely opposition to the motion. The trustee filed a timely reply. The court now issues the following tentative ruling on the merits the motion.

The debtor's opposition is dismissed. The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Federal Bankruptcy Rule 2014, the trustee is authorized to employ Pino & Associates ("P&A") as general bankruptcy counsel for the trustee effective February 17, 2014. P&A's fees and costs shall be paid only pursuant to application. 11 U.S.C. § 330; Fed. R. Bankr. P. 2016. Except as so ordered, the motion is denied.

The court finds that P&A is a disinterested person as that term is defined in 11 U.S.C. § 101(14).

The debtor has not shown that he has standing to object to the motion. As this court stated in its decision in In re Jackson, 241 B.R. 24 (Bankr. E.D. Cal. 2011) (Holman, J.) in order to determine a party's standing in the bankruptcy context, two inquiries are required. First, the court must determine whether the party has constitutional standing, i.e. whether the party has suffered sufficient injury to satisfy the "case or controversy" requirement of Article III. If the movant does not satisfy the first inquiry, the court lacks subject matter jurisdiction to hear the matter. Id. at 25. Second, if the court determines that constitutional standing is present, the court must determine whether the party has prudential standing, i.e. whether the party is properly able to assert a particular claim.

In this case, the debtor has not satisfied the requirements of constitutional standing. To satisfy Article III, a plaintiff "must show that (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Friends of the Earth, Inc. v. Laidlaw Envtl. Sys. (TOC), Inc., 528 U.S. 167, 180-81 (2000). In the bankruptcy context, whether a party has suffered an "injury in fact" is often based on whether the party has a pecuniary interest in the outcome of the case. See Matter of Fondiller, 707 F.2d 441, 442 (9th Cir. 1983). In this case, the debtor has not shown that he has any pecuniary interest in the outcome of the motion. He has not shown that his estate is solvent, so that the trustee's employment of P&A may affect a potential distribution to the debtor. Employment of P&A has no direct and immediate impact on the debtor's pecuniary interests. The debtor's only interest in the outcome of the motion is "as a potential party defendant in an adversary proceeding," which the Ninth Circuit has held is insufficient to confer standing to a debtor on matters relating to the trustee's employment of professionals:

The order authorized Quittner's employment for the exclusive purpose

of representing the trustee in an attempt to recover assets allegedly concealed by appellant and the debtor. Thus, appellant's only demonstrable interest in the order is as a potential party defendant in an adversary proceeding. As such, she is not a "person aggrieved" by Quittner's appointment. The order did not diminish her property, increase her burdens, or detrimentally affect her rights. Therefore, we hold that appellant lacks standing to bring this appeal.

Fondiller, 707 F.2d at 442 (citations omitted). Any argument that the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") confer constitutional standing on a debtor in this context as a "party in interest" is unavailing. As stated above, constitutional standing is required by Article III of the United States constitution in order for a "case or controversy" to exist over which a federal court has subject matter jurisdiction. The Bankruptcy Rules may create prudential standing, but they cannot create constitutional standing where none otherwise exists.

However, even if the debtor had standing to object, his opposition is not persuasive, and it would be overruled. The gravamen of the debtor's objection is that he is upset that the trustee won't take the debtor at his word regarding the availability of assets in the estate for administration and that the trustee's proposed counsel is too "aggressive" in pursuing information related to the debtor and/or his assets. Neither of these arguments is a valid basis for denial of the motion. The court finds that the trustee in his reply has articulated a sufficient necessity, in his business judgment, for employment of counsel.

Counsel for the trustee shall submit an order that conforms to the foregoing ruling.

13. [14-21360](#)-B-7 STEVEN/JULIE AASEN MOTION TO COMPEL ABANDONMENT
JRR-1 3-4-14 [[10](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to May 6, 2014, at 9:32 a.m.

As the personal property for which the debtors seek abandonment (the "Property") is alleged to be of inconsequential value and benefit to the estate solely due to the fact that the Property is claimed as exempt, the court continues the motion to a date after the period for objecting to the debtors' claims of exemption pursuant to Fed. R. Bankr. P. 4003(b) (1) has expired.

The court will issue a minute order.

14. [11-40964](#)-B-7 WILLIAM/KIMBERLY FERRIS MOTION TO AVOID LIEN OF CAPITAL
BLG-2 ONE BANK (USA), N.A.
3-21-14 [[19](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Capital One Bank (USA), N.A., recorded in the official records of Shasta County, Doc No. 2011-0002589, is avoided as against the real property located at 21745 Berkeley Drive, Palo Cedro, CA 96073 (the "Property").

The Property had a value of \$281,000.00 as of the date of the petition. The unavoidable liens total approximately \$320,020.58. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

15. [13-20966](#)-B-7 MICHAEL GRILLS CONTINUED MOTION TO COMPROMISE
SLC-1 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MICHAEL JOHN
GRILLS
3-10-14 [[27](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the chapter 7 trustee is authorized to enter into and perform in accordance with the settlement agreement on the terms set forth in the motion (Dkt. 27) (the "Agreement"). Except as so ordered, the motion is denied.

The court has great latitude in approving settlement agreements. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). The court is required to consider all factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Protective Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court will not simply approve a compromise proffered by a party without proper and sufficient evidence supporting the compromise, even in the absence of objections.

The trustee alleges without dispute that the Agreement is fair and equitable and in the best interests of the estate and its creditors. She

asserts that the Agreement will avoid the expense of a trial, which would require the bankruptcy estate to hire outside counsel. Additionally, she claims that the merits of litigation are difficult to assess and that there may be an issue in collecting any potential judgment. She further believes that the Agreement will avoid the delay of litigation and will result in a quicker distribution to creditors. The signed, sworn declaration of the debtor (Dkt. 32) indicates that the debtor has already performed under the terms of the Agreement. The court finds that the Agreement is a reasonable exercise of the trustee's business judgment. In re Rake, 363 B.R. 146, 152 (Bankr. D. Idaho 2006). Accordingly, the court finds that the trustee has carried her burden of persuading the court that the Agreement is fair and equitable, and the motion is granted.

The court will issue a minute order.

16. [14-21768](#)-B-7 JASBIR DHILLON MOTION TO AVOID LIEN OF IPC
RSG-1 (USA), INC.
3-21-14 [[10](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of IPC (USA), Inc., recorded in the official records of Sutter County, Doc No. 2010-0019570, is avoided as against the real property located at 2815 Art Drive, Yuba City, CA 95993 (the "Property").

The Property had a value of \$190,887.00 as of the date of the petition. The unavoidable liens total approximately \$129,216.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 704.730, under which he exempted \$61,671.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

17. [14-21768](#)-B-7 JASBIR DHILLON MOTION TO AVOID LIEN OF
RSG-2 SOUTHERN COUNTIES OIL CO., ETC
3-21-14 [[14](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Southern Counties Oil Co., etc., recorded in the official records of

Sutter County, Doc No. 2011-0007176, is avoided as against the real property located at 2815 Art Drive, Yuba City, CA 95993 (the "Property").

The Property had a value of \$190,887.00 as of the date of the petition. The unavoidable liens total approximately \$129,216.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 704.730, under which he exempted \$61,671.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

18. [14-21768](#)-B-7 JASBIR DHILLON MOTION TO AVOID LIEN OF CREDIT
RSG-3 SERVICES OF OREGON, INC.
3-21-14 [[19](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Credit Services of Oregon, Inc., recorded in the official records of Sutter County, Doc No. 2013-0007557, is avoided as against the real property located at 2815 Art Drive, Yuba City, CA 95993 (the "Property").

The Property had a value of \$190,887.00 as of the date of the petition. The unavoidable liens total approximately \$129,216.00. The debtor claimed the Property as exempt under California Code of Civil Procedure Section 704.730, under which he exempted \$61,671.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the Property and its fixing is avoided.

The court will issue a minute order.

19. [13-24369](#)-B-7 NAEEM/WIZMA AMIRI MOTION FOR COMPENSATION BY THE
DNL-3 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
LUKE HENDRIX, TRUSTEE'S
ATTORNEY
3-25-14 [[67](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of \$16,447.50 in fees and \$921.90 in expenses, for a total of \$17,369.40, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on July 3, 2013 (Dkt. 32), the court authorized the chapter 7 trustee to retain Desmond, Nolan, Livaich & Cunningham ("DNLC") as general bankruptcy counsel in this case, with an effective date of employment of June 17, 2013. The trustee now seeks compensation for services rendered and costs incurred by DNLC during the period of June 17, 2013, through and including March 19, 2014. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

20. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON MOTION TO EXTEND EXCLUSIVITY
MLA-2 PERIOD FOR FILING A CHAPTER 11
 PLAN AND MOTION/APPLICATION TO
 EXTEND EXCLUSIVITY PERIOD FOR
 FILING A CHAPTER 11 PLAN AND
 DISCLOSURE STATEMENT
 3-31-14 [[126](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

21. [11-40578](#)-B-7 JENNE ROSE AND BRIAN MOTION TO SUBSTITUTE ATTORNEY
KAG-2 SCOTT 3-21-14 [[81](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The movant, Kristin Greene, is permitted to withdraw as counsel for the debtors, Jenne Ellen Rose and Brian Jason Scott, in this bankruptcy case, case no. 11-40578. The movant shall forward to the debtors any documents or correspondences that are related to this bankruptcy case and received by the movant in the future. Except as so ordered, the motion is denied.

In the absence of opposition, the court finds that the movant has established grounds for permissive withdrawal from employment pursuant to California Rule of Professional Conduct 3-700(C)(1)(d).

The court will issue a minute order.

Tentative Ruling: The motion is denied without prejudice.

The debtors seek an order avoiding a judicial lien held by American Express to the extent it impairs a claim of exemption to which they would be entitled in their real property located at 4040 Hunters Drive, Loomis, CA 95650 (the "Property"). To avoid a judicial lien pursuant to 11 U.S.C. § 522(f), the debtors must show the following:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a non-possessory, non-purchase money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

The debtors have failed to satisfy the above standard in two respects. First, they have failed to show that there is a judicial lien that encumbers the Property. Under California law, a judgment lien on real property is created by recording an abstract of judgment with the county recorder. Cal. Civ. Proc. Code 697.310(a). Here, the only attachments to the motion are copies of the debtors' Schedules A, D, and F (Dkt. 43). The debtors have failed to attach both a copy of the abstract of judgment and proof of its recordation with the county recorder. Second, the debtors' most recently filed Schedule C (Dkt. 1, p.14) indicates that the debtors have not claimed an exemption in the Property.

The court notes that, even if the motion were not denied without prejudice for the above defects, it would be denied without prejudice for failure to comply with the noticing requirements of the Local Bankruptcy Rules. The debtors' notice of hearing (Dkt. 41) takes the form of a motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1), *i.e.*, it states that opposition to the motion must be filed and served no later than fourteen (14) days prior to the hearing date. However, a motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1) must be filed and served at least twenty-eight (28) days prior to the hearing date. LBR 9014-1(f)(1). Today's date is April 22, 2014. Twenty-eight days prior to today's date was March 25, 2014. This motion was filed, served, and set for hearing on April 3, 2014, which is only nineteen (19) days prior to today's hearing. A motion set on less than twenty-eight days' notice must conform to the requirements of Local Bankruptcy Rule 9014-1(f)(2), unless an order shortening time is requested. A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

Tentative Ruling: The motion is dismissed without prejudice.

The motion was not properly served. A motion to avoid a judicial lien is a contested matter pursuant to Fed. R. Bankr. P. 9014. As such, the motion must be served on the party against whom relief is sought consistent with the requirements of Fed. R. Bankr. P. 7004. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion by first class mail to the attention of an officer, a managing or general agent, or to any other agent authorized by law to receive service of process. In this case, the debtor seeks relief against Grant & Weber, the corporate lienholder ("G&W"). The proof of service of the amended motion (Dkt. 16) and proof of service of the amended notice of hearing (Dkt. 14), indicate that service was performed on G&W's attorney, Reid L. Steinfeld ("Mr. Steinfeld"). However, the debtor has not shown that service on Mr. Steinfeld constitutes proper service on G&W. Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88 94 (9th Cir. BAP 2004). Accordingly, there is no presumption of service on G&W as required pursuant to Fed. R. Bankr. P. 9014(b) and 7004(b)(3), and the motion is dismissed without prejudice.

The court notes that, even if the motion were not dismissed without prejudice for the above reason, it would be denied without prejudice for failure to comply with the noticing requirements of the Local Bankruptcy Rules. The amended notice of hearing does not specify whether the motion is set pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). Motions set pursuant to Local Bankruptcy Rule 9014-1(f)(1) must be set on at least twenty-eight (28) days' notice and state that opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the court at least fourteen (14) calendar days preceding the date of the hearing. LBR 9014-1(f)(1)(B). Furthermore, since written opposition is required for motions set pursuant to Local Bankruptcy Rule 9014-1(f)(1), the notice of hearing must state that failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. LBR 9014-1(d)(3) and LBR 9014-1(f)(1)(B). In contrast, motions set pursuant to Local Bankruptcy Rule 9014-1(f)(2) are set on fourteen (14) days' notice and must state that no party in interest shall be required to file written opposition, and that opposition, if any, shall be presented at the hearing on the motion. LBR 9014-1(f)(2)(C). Here, the debtor's notice of hearing takes the form of a motion set pursuant to Local Bankruptcy Rule 9014-1(f)(1). However, it states that written opposition is due not less than five (5) court days preceding the noticed date of hearing. As set forth above, nothing in the Local Bankruptcy Rules instructs a respondent to file written opposition not less than five court days prior to the hearing. A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g).

The court will issue a minute order.

24. [14-20798](#)-B-7 BABY SIGNS, INC.
DNL-3

MOTION TO EMPLOY WEST AUCTIONS,
INC. AS AUCTIONEER, AUTHORIZING
SALE OF PROPERTY AT PUBLIC
AUCTION AND AUTHORIZING PAYMENT
OF AUCTIONEER FEES AND EXPENSES
4-1-14 [[20](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

25. [14-20798](#)-B-7 BABY SIGNS, INC.
DNL-4

MOTION TO SELL
4-1-14 [[26](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

26. [13-30420](#)-B-7 STEPAN KIRCHU
[13-2348](#) KWD-1
LEE V. KIRCHU

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
3-24-14 [[24](#)]

Tentative Ruling: None.