UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 9, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

1.	13-27002-D-7 FF-3	RICHARD ROBERTS	MOTION TO CONVERT CASE TO CHAPTER 13 6-11-14 [53]

2.	14-22503-D-7 ACK-2 **Final ruling:**	JULIANE BUZZARD	MOTION TO AVOID LIEN OF EQUABLE ASCENT FINANCIAL, LLC 6-3-14 [22]

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.

3. 14-22907-D-7 FAWZI KARAJEH — MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
MRE-1 — 6-2-14 [18]

Final ruling:

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

4. 14-22907-D-7 FAWZI KARAJEH — MOTION TO AVOID LIEN OF GLOBAL ACCEPTANCE CREDIT COMPANY, LP
MRE-2 — 6-2-14 [22]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the 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.

5. 14-22907-D-7 FAWZI KARAJEH — MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
MRE-3 — 6-2-14 [26]

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.

6. 14-22907-D-7 FAWZI KARAJEH — MOTION TO AVOID LIEN OF GLOBAL ACCEPTANCE CREDIT COMPANY, LP
MRE-4 — 6-2-14 [30]

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.

7. 14-22308-D-7 MARIA BERTOLUCCI
TJS-1
JPMORGAN CHASE BANK, N.A.
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-2-14 [12]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received her discharge on June 18, 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.

8. 14-23508-D-7 DAVID WALTON
MRE-1

MOTION TO AVOID LIEN OF CALVARY SPV I, LLC
5-21-14 [13]

Final ruling:

This is the debtor's motion to avoid a judicial lien allegedly held by Cavalry SPV I, LLC (the "creditor"). The motion will be denied for two reasons. First, the moving party failed to serve the creditor 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 creditor only through the attorneys who obtained its abstract of judgment, with no evidence those attorneys are authorized to accept service of process on behalf of the creditor in bankruptcy adversary proceedings and contested matters, pursuant to Fed. R. Bankr. P. 7004(b)(3). See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004).

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

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

9. 14-25710-D-7 RK-1 — STEVEN/MELISSA CUSTODIO — MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATIONS, LLC 6-9-14 [10]

Final ruling:

This is the debtors' motion to avoid a judicial lien allegedly held by Portfolio Recovery Associates, LLC (the "creditor"). The motion will be denied because the moving parties failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate that the moving parties are entitled to the relief requested, as required by LBR 9014-1(d)(6). "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). Here, the moving parties filed a copy of the creditor's abstract of judgment as an exhibit. However, they failed to file a recorded copy; thus, they have failed to demonstrate that the creditor holds a judicial lien that impairs their exemption. (The debtors' exhibit cover page describes the exhibit as a "Superior Court Stamped Abstract of Judgment." However, it is the recording of an abstract of judgment, not its issuance by the court, that causes a lien to attach to the judgment debtor's property in the county where the abstract is recorded.)

As a result of this evidentiary defect, the motion will be denied by minute order. No appearance is necessary.

10. 14-25710-D-7 RK-2 — STEVEN/MELISSA CUSTODIO — MOTION TO COMPEL ABANDONMENT 6-9-14 [15]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

11. 14-23011-D-7 UST-1 — CHRISTINE CRUZ — MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B) 5-30-14 [16]

Final ruling:

The hearing on this motion is continued to July 23, 2014 at 10:00 a.m. No appearance is necessary on July 9, 2014.

12.	12-40315-D-11 DNL-4	OLUSEGUN/YVONNE LERAMO	MOTION TO ABANDON 6-12-14 [145]
13.	12-40315-D-11 DNL-5	OLUSEGUN/YVONNE LERAMO	MOTION TO CONVERT CASE TO CHAPTER 7 6-12-14 [150]
14.	14-25524-D-7	HEIN VAN GLABBEEK AND ELISABETH THISSEN-VAN	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 5-27-14 [5]
15.	14-23128-D-7 MMN-4	ABDELLA ALI	MOTION TO AVOID LIEN OF AMERICAN EXPRESS 5-30-14 [35]

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.

16. 14-23128-D-7 ABDELLA ALI — MOTION TO AVOID LIEN OF CITIBANK
MMN-5 — 5-30-14 [40]

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.

17. 14-23128-D-7 ABDELLA ALI — MOTION TO AVOID LIEN OF GOLDEN 1
MMN-6 — 5-30-14 [45]

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.

18. 14-24734-D-7 HOMER BLACK — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
TD AUTO FINANCE, LLC VS. — 5-28-14 [16]

Final ruling:

This matter is resolved without oral argument. This is TD Auto Finance, LLC'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. Accordingly, the court will grant relief from stay by minute order. 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). There will be no further relief afforded. No appearance is necessary.

19. 11-33637-D-7 JEANETTE LIAS — MOTION TO DISMISS CASE
5-23-14 [385]

20.	11-33637-D-7 SCF-3	JEANETTE LIAS	CONTINUED MOTION TO COMPEL 4-8-14 [367]
21.	14-25148-D-12 MF-2	HENRY TOSTA	CONTINUED MOTION TO USE CASH COLLATERAL 5-20-14 [18]

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

22.	14-25150-D-12 MF-2	HENRY TOSTA, JR. FAMILY, L.P.	CONTINUED MOTION TO USE CASH COLLATERAL 5-20-14 [15]

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

23.	13-31754-D-11 JBY-5 **Final ruling:**	VICTOR/SVETLANA PARSHIN	MOTION FOR COMPENSATION FOR JEFFERY YAZEL, DEBTORS' ATTORNEY 5-21-14 [97]

This is the application of the debtors' former counsel, Jeffery Yazel, for compensation. The motion will be denied for the following reasons. First, the moving party failed to serve the debtors' attorney. Second, the moving party failed to serve the creditor requesting special notice at DN 52 at its designated address, and failed to serve the creditors who filed Claim Nos. 2, 3, 4, and 5 at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g). Third, the moving party served only one of the many entities listed as unsecured creditors on the debtors' Schedule F who have not filed proofs of claim, as required by Fed. R. Bankr. P. 2002(a)(6). Fourth, the proof of service incorrectly gives the service date as March 21, 2014, whereas the documents served were not signed and filed until May 21, 2014.

As a result of these service defects, the motion will be denied, and the court need not reach the merits of the motion at this time. The motion will be denied by minute order. No appearance is necessary.

24. 14-23754-D-7 SEAN MESSICK
KAZ-1
JPMORGAN CHASE BANK, N.A.
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-29-14 [15]

Final ruling:

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

25. 14-22457-D-7 JOHN/JOAN ANDAMA
UST-2

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
5-14-14 [18]

26. 14-21759-D-7 WILLIAM NYLANDER
14-2124
HALSTEAD V. NYLANDER

AMENDED MOTION TO DISMISS ADVERSARY PROCEEDING OR TO STRIKE CERTAIN PORTIONS OF COMPLAINT
6-6-14 [15]

Tentative ruling:

This is the defendant's motion to dismiss the plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6), made applicable in this proceeding by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted, or in the alternative, pursuant to Fed. R. Civ. P. 9(b) (Fed. R. Bankr. P. 7009), for failure to plead fraud with sufficient particularity, and to strike certain portions of the complaint, or in the alternative, for a more definite statement, pursuant to Fed. R. Civ. P. 12(e) (Fed. R. Bankr. P. 7012(b)). The plaintiff has filed a response in opposition to the motion. For the reasons discussed below, the court will grant the motion in part, with leave to amend, and deny the motion in part.

In ruling on a Rule 12(b)(6) motion, a court "accept[s] as true all facts alleged in the complaint, and draw[s] all reasonable inferences in favor of the plaintiff." al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Newcal Indus., Inc. v. Ikon Office Solution, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court assesses whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd, 580 F.3d at 949, citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

By her complaint, the plaintiff seeks a determination that her state court judgment against the defendant is not dischargeable. She cites § 523(a)(2) and (a)(4) and § 727(c), (d), and (e) of the Bankruptcy Code.

The plaintiff alleges in the complaint that in August of 2002, the plaintiff and the defendant entered into a contract under which the defendant, while "illegally and fraudulently posing as a licensed contractor" (Compl., filed May 7, 2014, at 1), agreed to build and install kitchen cabinets in the plaintiff's home and to do other work in the home; that the defendant "had no intention of finishing the job, took all of [her] money under duress, [and] removed [her] kitchen, leaving [her] with 'no' kitchen" (id.); that the defendant "also did not pay his employee who was installing crown molding, causing the employee to quit" (id.); and that as a result, the plaintiff was "unable to function in [her] kitchen, ([she is] a professional chef) or sell or rent [her] home as a result of the abandonment of the job" (id.), but instead was required to purchase a temporary kitchen from Home Depot and pay a licensed contractor to have it installed. The plaintiff alleges she incurred significant additional expense and suffered "tremendous financial and physical stress, almost losing [her] home in the process." Id.

Citing the defendant's alleged conviction of grand theft involving a similar pattern of conduct in six other cases and a resulting order to pay restitution totaling $92,000, the plaintiff "intend[s] to show that [the defendant] . . . was using his illegal contracting business as a con to extract money from his victims with no intention of doing the work." Compl. at 2 (emphasis omitted). The plaintiff filed a breach of contract complaint in state court, which resulted in a default judgment against the defendant for $72,643.34.

The Significance of the Plaintiff's State Court Judgment

The defendant's first argument is that because the plaintiff obtained a state court judgment on a complaint alleging breach of contract by the defendant, and not fraud, she is now precluded from seeking a determination of nondischargeability of that judgment. The defendant contends:

> • The only debt scheduled by debtor to [the plaintiff] is a default judgment for breach of contract . . . . [The plaintiff's] Adversary Complaint begins, "I am challenging the dischargeability of the judgment awarded to me by the Napa County Superior Court . . . ." Mem. of P. & A., filed June 3, 2014, at 2:16-19.
>
> • [T]he Superior Court action [was] simply for a breach of contract to build cabinets. Id. at 2:24-25.
>
> • Plaintiff provides no statutory authority for denying discharge for this debt[;] all of her authority relates to some type of fraud, which is not involved in that earlier judgment at all. Id. at 3:1-2.
>
> • Plaintiff . . . wants her 2004 Superior Court judgment against debtor to be excepted from discharge. As we saw above, this is both the alpha and omega of her complaint. Id. at 3:18-19. . . . [T]here is simply no authority contained in § 523 for excepting from discharge a judgment for breach of contract. Id. at 4:23-24.

As indicated above, the gist of this argument is that, once a judgment debtor files bankruptcy, a creditor may not seek a determination of nondischargeability of a state court judgment that was based solely on a breach of contract complaint. The defendant provides no authority for this proposition, and binding case law is to the contrary. See Brown v. Felsen, 442 U.S. 127, 132-39 (1979); In re Daley, 776 F.2d 834, 837 (9th Cir. 1985); In re Gross, 654 F.2d 602, 604 (9th Cir. 1981); Zauper v.

Lababit (In re Lababit), 2009 Bankr. LEXIS 4524, *18 (9th Cir. BAP 2009); Wendt v. Hanson (In re Hanson), 2011 Bankr. LEXIS 5217, *6 (Bankr. S.D. Cal. Nov. 21, 2011).

In the words of the Supreme Court, the proposition suggested by the defendant here – that because the state court complaint was for breach of contract, the plaintiff is precluded by the state court judgment from seeking a determination of nondischargeability based on fraud – "would undercut a statutory policy in favor of resolving [dischargeability] questions in bankruptcy court, and would force state courts to decide these questions at a stage when they are not directly in issue and neither party has a full incentive to litigate them." Brown v. Felsen, 442 U.S. at 134. "In the collection suit, the debtor's bankruptcy is still hypothetical. The rule proposed by [the debtor] would force an otherwise unwilling party to try [dischargeability] questions to the hilt in order to protect himself against the mere possibility that a debtor might take bankruptcy in the future." Id. at 135. Thus, the court rejects the defendant's argument.

Like the defendant, but seeking the opposite result, the plaintiff would also extend the effect of the state court judgment beyond its proper scope, as determined by the requirements for application of issue preclusion. She states in her response to this motion that the judgment was "based on" an allegation in the state court complaint that the defendant's conduct was

> "intentional, wrongful, and illegal, intended to cause injury to the plaintiff, was despicable conduct and done with a willful and conscious disregard for the rights of the plaintiff, subjected plaintiff to cruel and unjust hardship, and as such subjects defendant[] to payment of punitive damages and exemplary damages."

Resp., filed June 11, 2014, at 1, quoting Compl., Napa County Superior Court Case No. 26-25906, filed June 26, 2004, at 4:5-8. The plaintiff also claims the state court judge "agreed" with that allegation. Resp. at 3.

Based on the documents the parties have submitted, it does not appear the state court judge made any such determination. Neither party has submitted a copy of the state court judgment itself, but the plaintiff's adversary complaint states that the amount of the judgment was $72,649.34, a figure comprised of special damages, general damages, costs, and attorney's fees, as broken down in the plaintiff's memorandum of points and authorities in support of the default judgment, filed in the state court.[1] The $72,649.34 figure did not include any punitive or exemplary damages. Further, neither the plaintiff's memorandum of points and authorities nor her declaration supporting her request for a default judgment made any mention of any conduct on the part of the defendant other than breach of contract.

There is no indication that there was any language in the judgment itself about intent or willfulness on the defendant's part, or that the state court made any findings along those lines, or that any portion of the judgment was for punitive or exemplary damages. Thus, the court concludes that the only issues actually litigated and necessarily decided in the state court action, as required for the application of issue preclusion (see Lucido v. Superior Court, 51 Cal. 3d 335, 341-43 (1990),[2] were the fact of the debt and its amount.

The Plaintiff's § 523(a) Claims

Having disposed of the parties' arguments concerning the effect of the state court judgment, the court will turn to the defendant's contention that the

plaintiff's adversary complaint does not contain sufficient facts to state a claim for relief under § 523(a)(2) or (a)(4). Taking these in reverse order, the court agrees with the defendant that the complaint fails to state a claim for breach of fiduciary duty, embezzlement, or larceny. As to this claim for relief, the complaint does nothing more than quote the language of the statute; thus, it does not contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" (al-Kidd, 580 F.3d at 949), and as to that claim, the motion will be granted with leave to amend.

The claim for relief under § 523(a)(2) is more problematic because the complaint contains some factual allegations that would support the claim. However, it does not allege facts sufficient to support all the required elements. The elements of a cause of action under that subsection are:

> (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.

Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000). Here, the plaintiff has alleged that (1) the defendant, while illegally and fraudulently posing as a licensed contractor, entered into a contract to build cabinets and perform other work in the plaintiff's home; (2) that the defendant required a 50% down payment rather than 10%, which is the maximum allowed by state law; (3) that the defendant undertook certain actions that only licensed contractors are permitted to do, including removing her kitchen and installing the framing for new cabinets, and having his employee install crown molding; (4) that the defendant had no intention of finishing the job; (5) that the defendant took her money under duress, insisting she pay him the balance that was not yet due as a condition to finishing the job; and (6) that the defendant engaged in a pattern of taking customers' money with no intention of performing the agreed work.

Although these add up to a significant number of allegations that would tend to support the plaintiff's § 523(a)(2) claim, and although state of mind and intent may be pled generally,[3] the complaint does not touch on all the required elements, as set forth above, and does not allege the required elements with sufficient particularity.[4] It does not, for example, allege with sufficient particularity that the defendant intended to deceive the plaintiff, that the plaintiff justifiably relied on the defendant's statements or omissions, or that the plaintiff's damages were proximately caused by her reliance on the defendant's statements or omissions. Further, the plaintiff's claims center primarily on omissions, as opposed to affirmative representations (the omission to tell the plaintiff the defendant was not a licensed contractor; the omission to tell her he had no intention of finishing the job); however, the complaint also fails to meet the required standards for a § 523(a)(2) claim based on omission.

> A debtor's failure to disclose material facts constitutes a fraudulent omission under § 523(a)(2)(A) if the debtor was under a duty to disclose and possessed an intent to deceive. To determine whether there was a duty to disclose, we look to the traditional common law rule stated in the Restatement (Second) of Torts § 551 (1976) which provides in relevant part:

> (1) One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.
>
> (2) One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated, ... (e) facts basic to the transaction, if he knows that the other is about to enter into it under a mistake as to them, and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts.

Haglund v. Daquila (In re Daquila), 2011 Bankr. LEXIS 902, *13-14, citing and quoting Apte v. Japra (In re Apte), 96 F.3d 1319, 1322, 1324 (9th Cir. 1996). In light of these required elements, accepting the allegations of the plaintiff's complaint as true (for purposes of this motion only), and drawing all reasonable inferences in favor of the plaintiff (again, for purposes of this motion only), the court concludes that the complaint does not contain sufficient factual matter to state a claim for relief that is plausible on its face. Accordingly, as to the § 523(a)(2) claim, the motion will be granted with leave to amend.

The Plaintiff's § 727 Claims

At the end of the plaintiff's complaint, she cites § 727(c), (d), and (e) of the Code, quoting subsection (c)(2), which provides that "[o]n request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge." Although the plaintiff's response to this motion contains a variety of questions concerning the defendant's schedules and statements in the underlying chapter 7 case, as well as concerning his testimony at the meeting of creditors, her complaint in this adversary proceeding includes no allegations that would support an order that the trustee make such an examination. Further, the trustee is not a party to this adversary proceeding, and has not had an opportunity to weigh in on the issues raised in the plaintiff's response to this motion. The bar date for complaints objecting to the debtor's discharge has passed; thus, the trustee would not be able to file such a complaint regardless of the result of any examination of the defendant's acts and conduct. Finally, any amended complaint filed by the plaintiff to add § 727(a) claims would not relate back to her original complaint, and thus, would be time-barred.

As a general rule, amendments to pleadings are to be liberally allowed in view

of the policy favoring determination of disputes on their merits. See Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a)(2); Magno v. Rigsby (In re Magno), 216 B.R. 34, 38 (9th Cir. BAP 1997), citing Forsyth v. Humana, Inc., 114 F.3d 1467, 1482 (9th Cir. 1997). Here, however, the plaintiff's complaint alleges only facts tending to support a § 523(a)(2) claim, not a § 727(a) claim. Of the allegations set forth in her response to this motion, supporting the request that the trustee be ordered to examine possible grounds for denial of discharge, only a few relate in any way to the allegations supporting the § 523(a)(2) claim contained in her adversary complaint, and those few are so tangentially related that an amended complaint adding a § 727(a) claim or claims would not relate back to the original complaint (see Magno, 216 B.R. at 39-42); thus, they would be time-barred. Therefore, amendment of the plaintiff's complaint would be futile. Accordingly, as to the § 727(c)(2) claim, the motion will be granted without leave to amend.

Subsections 727(d) and (e) pertain solely to revocation of a discharge, whereas in the defendant's parent case, the discharge has not yet been entered; thus, there is no discharge to revoke. As to those claims, the motion will be granted without leave to amend.

The Defendant's Criminal Problems in Napa County

The defendant next moves to strike the plaintiff's allegations concerning the defendant's conviction for grand theft on the ground that the allegations are irrelevant and prejudicial. The defendant does not cite any procedural rule or other authority under which this request is made. Thus, the court will assume the authority is Fed. R. Civ. P. 12(f), incorporated herein by Fed. R. Bankr. P. 12(b), which provides that "[t]he court may strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." The court finds that the charges underlying the defendant's conviction tend to establish a pattern of conduct similar to the conduct alleged by the plaintiff with regard to the defendant's agreement to build and install kitchen cabinets in her home; thus, they are relevant. The defendant's argument that the charges are "prejudicial" is an unsupported conclusion. Thus, the motion to strike will be denied.

The defendant also requests that these two allegations be stricken from the plaintiff's complaint: (1) that the defendant was not a licensed contractor; and (2) that he did not pay his employee, who then quit. The grounds for the request are (1) that these allegations were not included in the plaintiff's state court complaint; and (2) that they are not relevant to this proceeding. The defendant has cited no authority for the proposition that a plaintiff may include in a nondischargeability complaint only allegations that were included in an earlier state court complaint, and the court is aware of none. The court finds that these particular allegations are relevant to the claims made in the plaintiff's complaint; thus, the request to strike them will be denied.

Defendant's Remaining Requests

Finally, the defendant requests that if the motion to dismiss the complaint is denied, the plaintiff be ordered to (1) include in her complaint an allegation as to whether this is a core or a non-core proceeding; and (2) format her complaint using numbered paragraphs. The request will be granted. An adversary complaint "shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge." Fed. R. Bankr. P. 7008(a). Further, "[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a

single set of circumstances." Fed. R. Civ. P. 10(b), incorporated herein by Fed. R. Bankr. P. 7010.

In her response, the plaintiff cites the Adversary Proceeding Cover Sheet she was provided by the court as not requiring the use of numbered paragraphs or a statement as to the core or non-core nature of the proceeding. However, the procedural rules for adversary proceedings are not limited to the statements in the cover sheet. The court recognizes that the plaintiff is representing herself in pro se in this proceeding. However, the procedural rules apply equally to pro se litigants.

> Any individual representing himself or herself without an attorney is bound by the Federal Rules of Civil or Criminal Procedure, these Rules, and all other applicable law. All obligations placed on "counsel" by these Rules apply to individuals appearing in propria persona. Failure to comply therewith may be ground for dismissal, judgment by default, or any other sanction appropriate under these Rules.

Local Dist. Court Rule 183(a), incorporated herein by LBR 1001-1(c); see also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the same rules of procedure that govern other litigants.").

For the reasons stated, the court will (1) deny the defendant's motion to strike; (2) grant the motion to dismiss the complaint as to the § 727(c), (d), and (e) claims without leave to amend; (3) conditionally grant the motion to dismiss as to the § 523(a)(2) and (a)(4) claims; and (4) deny the motion for a more definite statement as moot. As to the § 523(a)(2) and (a)(4) claims, the plaintiff may file an amended complaint within 30 days from the date of the order on this motion; if she does not, the complaint will be dismissed without further notice or hearing. If the plaintiff files an amended complaint within 30 days from the date of the order, the defendant shall file an answer or other response in accordance with applicable rules. If the plaintiff files an amended complaint, the complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the plaintiff does or does not consent to entry of final orders or judgment by the bankruptcy judge. The amended complaint shall also state the plaintiff's claims in numbered paragraphs, each limited as far as practicable to a single set of circumstances.

The court will hear the matter.

---

1 According to the memorandum, the special damages were for the plaintiff's loss of use of her kitchen for six months, at $500 per month, and the general damages were in the amount the plaintiff alleged she had paid the defendant plus the amount she allegedly paid Home Depot for the temporary kitchen.

2 In considering whether to give preclusive effect to a state court's judgment, the bankruptcy court looks to that state's law on preclusion. Diamond v. Kolcum (In re Diamond), 285 F.3d 822, 826 (9th Cir. 2002).

3. Fed. R. Civ. P. 9(b), incorporated here by Fed. R. Bankr. P. 7009.

4. Where a plaintiff pleads fraud, "the entire complaint must . . . be pleaded with particularity" (Kearns v. Ford Motor Co., 567 F.3d 1120, 1127 (9th Cir. 2009), including the elements of reliance and damages. Wayne Merritt Motor Co. v. N.H. Ins. Co., 2011 U.S. Dist. LEXIS 122320, *36 (N.D. Cal. 2011).

27. 13-32863-D-7 SCOTT SICKELS MOTION TO COMPEL
14-2002 PLC-1 5-29-14 [29]
KEARNEY V. SICKELS

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the motion of the defendant in this adversary proceeding, in his capacity as a counter-claimant, to compel the plaintiff, in her capacity as the counter-defendant, to provide discovery responses, including answers to interrogatories and a response to a request for production of documents. The motion will be denied for two reasons. First, the moving party failed to include a certificate that he has in good faith conferred or attempted to confer with the responding party over this discovery dispute, as required by Fed. R. Civ. P. 37(a)(1), incorporated herein by Fed. R. Bankr. P. 7037. The only evidence in support of the motion is the declaration of the moving party's attorney, Peter Cianchetta, and certain exhibits.

Mr. Cianchetta testifies to the authenticity of two letters his office sent to the counter-defendant (who is representing herself in this proceeding), and one letter he received from her. He also testifies the counter-defendant has not provided answers to interrogatories or a response to a request for production of documents, both of which were served on the counter-defendant's former counsel on April 3, 2014. Copies of the letters, the interrogatories, and the request for production are filed as exhibits, along with a proof of service signed by David A. Pereira, of Mr. Cianchetta's office, purporting to evidence service of the interrogatories and request for production on April 3, 2014. The first letter from Mr. Cianchetta's office to the counter-defendant reminded her of the due date of her responses, May 4; the second advised her that the office was giving her an extension to May 19. In the counter-defendant's letter to Mr. Cianchetta, she requested an additional extension of time, for 60 days. Those letters are, apparently, the total of the communication between Mr. Cianchetta's office and the counter-defendant concerning this discovery dispute. The letters fall far short of the efforts necessary to satisfy the good faith meet and confer requirements of FRCP 37(a)(1). The court draws the parties' attention to In re Sanchez, 2008 WL 4155115, 2008 Bankr. LEXIS 4239 (Bankr. E.D. Cal. 2008), for the good faith meet and confer standard the court will hold the parties to.

Second, the moving party has failed to demonstrate that he has standing to prosecute his counterclaim, and thus, standing to bring this motion. By her complaint commencing this adversary proceeding, the plaintiff sought a determination of nondischargeability of a debt alleged to have been incurred in connection with the parties' marital dissolution proceeding. The plaintiff alleged that the amount of the debt had been determined by the state court. In his counterclaim, the defendant alleges a variety of circumstances concerning a truck and a piece of real property which were apparently addressed in the parties' marital settlement agreement. He contends his obligations to the plaintiff have been fully satisfied, and he claims the plaintiff engaged in bankruptcy fraud in her own bankruptcy case, commenced six years ago. He seeks a judgment against her for breach of fiduciary duty, fraud, unjust enrichment, and conversion, along with a determination that the debt he owed her has been satisfied.

The defendant did not list any claim against the plaintiff on his Schedule B filed in the parent case in which this adversary proceeding is pending. He suggests in the present motion that he discovered his claims in the course of responding to

this adversary proceeding, but it is clear from the motion and the defendant's discovery requests that the claims arose prior to the filing of the defendant's chapter 7 case, on October 1, 2013. Thus, the claims are property of the debtor/defendant's bankruptcy estate (see Cusano v. Klein, 264 F.3d 936, 945-46 (9th Cir. 2001)), and subject to administration only by the trustee, not the defendant. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004).[1]

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

---

1 The defendant's counterclaim goes far beyond the scope of the plaintiff's complaint, and seeks affirmative relief against an individual who has not otherwise consented to the jurisdiction of this court. (The plaintiff did not file a proof of claim in the defendant's parent case.) The parties should not presume from this ruling that the court has jurisdiction to consider the counterclaim on its merits, even if the standing hurdle can be overcome, or that, even if the court has such jurisdiction, the court would choose to exercise that jurisdiction. The plaintiff's complaint in this proceeding presents a simple issue: whether a debt determined by the state court in connection with the dissolution of the parties' marriage is nondischargeable under § 523(a)(15) of the Bankruptcy Code. It is not likely this court would exercise jurisdiction, even if it has such jurisdiction, to delve into the parties' marital settlement agreement or the state court's rulings.

28.	13-33264-D-7 DNL-1	JOHN EAMES	MOTION TO EMPLOY DESMOND, NOLAN, LIVAICH & CUNNINGHAM AS ATTORNEY(S) 5-22-14 [17]

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 employ Desmond, Nolan, Livaich & Cunningham as attorneys on a flat fee basis is supported by the record. As such the court will grant the motion to employ Desmond, Nolan, Livaich & Cunningham as attorneys on a flat fee basis. Moving party is to submit an appropriate order. No appearance is necessary.

29.	13-33264-D-7 DNL-2	JOHN EAMES	MOTION TO SELL 6-6-14 [21]

30. 13-33264-D-7 JOHN EAMES
DNL-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PATRICIA TILLIS, FIRST NORTHERN BANK OF DIXON AND JOHN EDWARD EAMES
6-6-14 [26]

31. 12-23373-D-7 KATHYN SIMONELLI
AT-1
VERDERA COMMUNITY ASSOCIATION VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-9-14 [38]

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 June 19, 2012 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.

32. 14-23677-D-7 RHONDA WIMBERLY-BRAGG
MRE-1

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
5-21-14 [11]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Midland Funding, LLC (the "creditor"). The motion will be denied because the moving party failed to serve the creditor 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 creditor (1) at a street address, with no attention line; and (2) through the attorneys who obtained its abstract of judgment. The first method was insufficient because the rule requires that service on a corporation, partnership, or other unincorporated association be addressed 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 there is no evidence the attorneys who obtained the creditor's abstract of judgment are authorized to accept service of process on behalf of the creditor in bankruptcy adversary proceedings and contested matters, pursuant to Fed. R. Bankr. P. 7004(b)(3). See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004).

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

33. 14-25779-D-7 JDP-1 — JOHN/VALERIE ROBERTSON — MOTION TO COMPEL ABANDONMENT 6-11-14 [9]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned. Moving party is to submit an appropriate order. No appearance is necessary.

34. 14-25285-D-7 MDE-1 — JASON/MAXIMA STUMBO — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 6-11-14 [10]

CITIMORTGAGE, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Citimortgage, Inc. 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.

35. 14-24788-D-11 — CHRISTIAN/AMANDA BADER — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-6-14 [1]

36. 13-32489-D-7 HCS-2 — DENNIS GALLAGHER AND JANE DUTRA GALLAGHER — MOTION TO EMPLOY ERIC J. RATINOFF AS SPECIAL COUNSEL 6-5-14 [58]

Tentative ruling:

This is the trustee's application to employ special counsel. No timely opposition has been filed, and with one exception, the relief requested in the motion is supported by the record. The exception is that the supporting declaration addresses only connections of the individual attorney, and not connections of the firm, whereas the court assumes the trustee will be employing the firm. (The application states that the trustee "proposes to employ Mr. Ratinoff on the same terms and conditions as the existing Fee Agreement between Mr. Ratinoff and the Debtors" (Application, at ¶ 6), whereas the fee agreement filed as an exhibit was between the debtors and the firm.) The court will continue the hearing to permit the moving party to supplement the record by disclosing all connections between the firm and the persons named in Fed. R. Bankr. P. 2014(a). Counsel is reminded that the rule requires disclosure of connections between those persons and the "person" to be employed (Fed. R. Bankr. P. 2014(a)), and that "person," in turn, is defined to include individual, partnership, and corporation. § 101(41) of the Code, incorporated in the rules by Fed. R. Bankr. P. 9001.

The court will hear the matter.

37. 14-25894-D-7 KREG KEYES — MOTION FOR RELIEF FROM AUTOMATIC STAY
SMR-1 — 6-11-14 [20]
JOHN MILLER VS.

Final ruling:

This matter is resolved without oral argument. This is John Miller's motion for relief from automatic stay. Debtor is a tenant under a lease agreement. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that the debtor only maintains a possessory interest 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 and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

38. 11-24501-D-7 SUE AMBROZEWICZ — CONTINUED TRUSTEE'S FINAL REPORT
EJS-1 — 5-1-14 [39]

39. 12-37801-D-7 SALVADOR/JOANNE MARTINEZ — MOTION TO AVOID LIEN OF KELKRIS ASSOCIATES, INC.
TJW-4 — 6-24-14 [45]

40. 12-37801-D-7 SALVADOR/JOANNE MARTINEZ — MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
TJW-5 — 6-24-14 [50]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Midland Funding LLC (the "creditor"). The motion will be denied because the moving parties failed to serve the creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the creditor (1) through the attorneys who obtained its abstract of judgment, and (2) to the attention of an agent for service, at an address that is not the address of the

creditor's agent for service of process. The first method was insufficient because there is no evidence the attorneys are authorized to accept service of process for the creditor pursuant to Fed. R. Bankr. P. 7004(b)(3) in bankruptcy adversary proceedings and contested matters. See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because where service is made to the attention of an agent for service of process, it must be to the attention of an agent actually authorized by appointment or by law to receive service of process. See Fed. R. Bankr. P. 7004(b)(3). The court takes judicial notice that the California Secretary of State shows the address used by the moving parties as the address of the creditor, not the address of its agent for service of process, Corporation Service Company.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

41. 14-26304-D-11 THERESA SIMMONS — MOTION TO EXTEND AUTOMATIC STAY
TBS-1 — 6-17-14 [6]

Tentative ruling:

This is the debtor's motion to extend the automatic stay pursuant to § 362(c)(3)(B) of the Bankruptcy Code. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

First, the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. In the event the court grants the motion, it will do so only after the moving party has filed a corrected proof of service. Second, the moving party failed to serve Hawaiian Shores Community Association, listed on a purported amended Schedule F filed June 19, 2014 [1] at all, and failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b). Thus, in the event the court grants the motion, the extension of the automatic stay will not apply to Hawaiian Shores Community Association or the Franchise Tax Board.

Finally, the debtor's schedules and statement of financial affairs raise significant doubts about the debtor's good faith in filing this chapter 11 case. The court may extend the stay "only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed . . . ." § 362(c)(3)(B). A case is presumptively not filed in good faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the prior case or any other reason to conclude that the later case will be concluded with a confirmed plan that will be fully performed. § 362(c)(3)(C)(i)(III). The debtor did not file schedules or statements in her prior case; thus, the court is unable to compare her financial situation, as disclosed in that case, with her present situation. Her declaration supporting this motion, however, is not specific enough to support a conclusion that there have been substantial changes in the debtor's financial or personal affairs since the dismissal of the prior case. Thus, the presumption arises that the present case was not filed in good faith.

The presumption may be rebutted by clear and convincing evidence that the present case was filed in good faith. § 362(c)(3)(C). The debtor's prior case was filed on March 4, 2014 and dismissed on March 17, 2014 for failure to timely file schedules and statements. The present case was commenced two months later, on June

16, 2014. The debtor states that when the prior case was dismissed, she was "in search of a chapter 11 attorney and was not able to secure an attorney . . . , as a result of the high retainer an experienced chapter 11 attorney requires." Decl., filed June 17, 2014, at 1:27-2:1. She also explains that "[her] and [her] husband's financial condition has changed significantly" (id. at 2:3), but she does not indicate over what time period the change occurred. According to the debtor's Schedule I, the debtor's husband is self-employed as a builder/contractor; according to the declaration, he "has some very good building projects currently progressing forward with his business . . . as a result of the real estate market rebounding." Id. at 2:4-5. She states that together they "will earn approximately $10,500.00 per month, plus rental income estimated at $5,200 per month when the properties are rented." Id. at 2:6-8. The debtor concludes: "I believe I will be able to pay my unsecured creditors $300.00 per month based upon my projections in schedule J." Id. at 2:9-10.

The declaration does not indicate what properties will be rented to bring in $5,200 per month. The debtor has scheduled two real properties – what appear to be single-family residences in Folsom, California and in Hawaii. The debtor has testified in support of motions to value collateral that those properties are not rented, but are expected to generate $4,200 and $1,100 per month, respectively, when rented. By contrast, the debtor listed rental income of just $169 per month on her Schedule I. If in fact the rental properties generate over $5,000 per month, the debtor's belief that she will be able to pay her unsecured creditors just $300 per month – a figure based on her and her husband's monthly net income, as shown on Schedule J, and based on rental income of just $169 per month – does not appear to be an estimate made in good faith.

The debtor's Schedule I shows her gross income as $4,000 per month and her husband's as $6,500 per month. (The debtor is self-employed in "real estate" with her husband's LLC.) She lists an additional $169 in rental income, for total gross income of $10,669. By contrast, the answers to questions 1 and 2 of the debtor's statement of financial affairs are "None"; that is, the debtor has testified under oath that she has had no income of any kind in the two years preceding the filing of this case. If that is true, the debtor will have a difficult time demonstrating that any plan that depends on her making $4,000 per month gross, even a plan that generates such an insignificant payment to unsecured creditors as $300 per month, is feasible. If the answer provided in the statement of affairs is untrue, the court's doubts about the debtor's credibility and good faith are even more compelling.

In fact, the debtor has answered every single question in the statement of affairs except question 9 (payments related to debt counseling or bankruptcy) with "None." Thus, she has testified she has made no payments to any creditor of more than $600 in the 90 days preceding the filing, not even the mortgage creditors; has made no payments to insider creditors within the past year; has been a party to no lawsuits; has made no gifts other than those totaling less than $200 per family member and $100 per charity; has transferred no assets; has closed no financial accounts; has no safe deposit boxes; holds no property for another; and has not been engaged in any business in the past six years.

The debtor's answer to question 16 is plainly incorrect. That question requires her to identify any spouse or former spouse who resides or resided with her in a community property state, such as California: the debtor answered "None." Moreover, where required to list on her Schedule H all persons liable with the debtor on any scheduled debts, the debtor answered "None." While this may be true, it is unlikely the debtor's husband is not a co-debtor on any of the debtor's debts.

The debtor's Schedule B is also questionable. She lists only $343 in financial accounts, a single vehicle, and no interest in any business. If the debtor has a community property interest in her husband's business or other assets used by her husband, she was required to disclose those interests, but did not.

The debtor's answer to question 15 of the statement of financial affairs, "None," also appears to be incorrect. There she testified she has not moved in the three years prior to the filing of this case. By contrast, on her petition in the prior case, filed March 4, 2014, the debtor listed a different street address from the one listed in this case. In fact, the street address she listed in the prior case is the address of the property in Folsom the debtor suggests in this case can be rented out for $4,200 per month. The court does not take lightly the apparent fact that the debtor failed to disclose her prior address where clearly required to do so on her statement of financial affairs. In short, it strongly appears the debtor has failed to comply in good faith with her duty of careful, complete, and accurate reporting in her schedules and statement of financial affairs in this case. See Hickman v. Hana (In re Hickman), 384 B.R. 832, 841 (9th Cir. BAP 2008), citing Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP 2007).

For the reasons discussed above, the court is unable to conclude, on the record before it, that the present case has been filed in good faith. Accordingly, the motion will be denied.

The court will hear the matter.

---

1 The debtor's counsel should note that the purported amended schedule was not filed under cover of an amendment cover sheet, EDC Form 2-015, and was not otherwise verified, as required by Fed. R. Bankr. P. 1008. This defect should be corrected.

42.	12-40315-D-11 FJA-1	OLUSEGUN/YVONNE LERAMO	CONTINUED MOTION TO REMOVE TRUSTEE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7 6-11-14 [140]

Final ruling:

This is the debtors' motion to remove the chapter 11 trustee and/or to convert this case to chapter 7. The moving parties failed to give sufficient notice of the request for conversion (see Fed. R. Bankr. P. 2002(a)(4)), and the hearing was continued to allow them to correct the notice defect. Specifically, the debtors were to file a notice of continued hearing and serve it, no later than June 25, 2014, on the trustee, his attorney, the United States Trustee, and all creditors, and to file a proof of service no later than June 27, 2014.

The moving parties have failed to take these steps; accordingly, the motion will be denied for failure to give the required amount of notice of the hearing. The motion will be denied by minute order. No appearance is necessary.

43. 06-22532-D-7 RIO MORALES
DNL-4

MOTION FOR AUTHORITY TO REMOVE/DISBURSE SETTLEMENT FUNDS FROM BLOCKED ACCOUNT
6-25-14 [477]

44. 14-25148-D-12 HENRY TOSTA
MF-7

MOTION TO EMPLOY BAUDLER & FLANDERS AS ACCOUNTANT(S)
6-20-14 [85]

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

This is the debtor's motion to employ Baudler & Flanders, CPAs, as his accountants. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

First, the moving party failed to serve Green Tree Servicing and Harold Van Vliet Trucking, both listed on his Schedule F in significant amounts, at all, and failed to serve those creditors who filed Claim Nos. 1, 3, 4, and 5 (all filed before this motion was served) at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g). Second, the declaration of Donna E. Flanders discloses in the vaguest of terms the prior connection between the firm and the debtor: "Prior to this engagement, Baudler & Flanders has been retained by Debtor previously." Decl., filed June 20, 2014, at 2:18. The declaration was filed in two different cases, under a combined caption; it does not indicate which of the two debtors previously retained the firm. Nor does it indicate during what time periods the firm provided services for the debtor, how much was paid for the services, or who or what entity made the payments.[1] The declaration is simply too vague for the court to be able to make the necessary findings that the firm is a disinterested person and that it does not hold or represent an interest adverse to the estate.

For the reasons stated, the motion will be denied. In the alternative, the court will continue the hearing to allow the moving party to correct the service defects and to supplement the evidentiary record. The court will hear the matter.

---

1 The court notes in this regard that in the statement of financial affairs, where required to list all bookkeepers and accountants who within two years prior to the bankruptcy filing kept or supervised the keeping of books of account and records of the debtor, the debtor listed (1) Schmidt, Bettencourt & Medeiros, LLP, and (2) Bill Pollard, Jr. CPA. He did not list Baudler & Flanders. And where required to list all firms and individuals who are in possession of books of account and records of the debtor, the debtor listed only Schmidt, Bettencourt & Medeiros, LLP. If in fact the debtor retained the services of Baudler & Flanders during the two-year time period, or if the firm has books of account and records of the debtor, it appears the statement of affairs will need to be amended.

45.	14-25148-D-12 MF-8	HENRY TOSTA	MOTION TO EMPLOY RESIDENTIAL GROUP REAL ESTATE AND LENDING AS BROKER(S) 6-20-14 [90]

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

Tentative ruling:

This is the debtor's motion to employ Don Burns, dba Residential Group Real Estate and Lending, to list, market, and sell a parcel of real property described in the motion. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The moving party failed to serve Green Tree Servicing and Harold Van Vliet Trucking, both listed on his Schedule F in significant amounts, at all, and failed to serve those creditors who filed Claim Nos. 1, 3, 4, and 5 (all filed before this motion was served) at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g). As a result of this service defect, the motion will be denied. In the alternative, the court will continue the hearing to allow the moving party to correct the service defect. The court will hear the matter.

46.	14-25150-D-12 MF-7	HENRY TOSTA, JR. FAMILY, L.P.	MOTION TO EMPLOY BAUDLER & FLANDERS AS ACCOUNTANT(S) 6-20-14 [85]

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

Tentative ruling:

This is the debtor's motion to employ Baudler & Flanders, CPAs, as its accountants. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

First, the moving party failed to serve Green Tree Servicing and Harold Van Vliet Trucking, both listed on its Schedule D in significant amounts, at all, and failed to serve the State Water Resource Control Board, listed on its Schedule F, also in a significant amount. Second, the declaration of Donna E. Flanders discloses in the vaguest of terms the prior connection between the firm and the debtor: "Prior to this engagement, Baudler & Flanders has been retained by Debtor previously." Decl., filed June 20, 2014, at 2:18. The declaration was filed in two different cases, under a combined caption; it does not indicate which of the two debtors previously retained the firm. Nor does it indicate during what time periods the firm provided services for the debtor, how much was paid for the services, or who or what entity made the payments.[1] The declaration is simply too vague for the court to be able to make the necessary findings that the firm is a disinterested person and that it does not hold or represent an interest adverse to the estate.

For the reasons stated, the motion will be denied. In the alternative, the court will continue the hearing to allow the moving party to correct the service defects and to supplement the evidentiary record. The court will hear the matter.

---

1 The court notes in this regard that in the statement of financial affairs, where required to list all bookkeepers and accountants who within two years prior to the bankruptcy filing kept or supervised the keeping of books of account and records of the debtor, the debtor listed only Schmidt, Bettencourt & Medeiros, LLP. The debtor did not list Baudler & Flanders. And where required to list all firms and individuals who are in possession of books of account and records of the debtor, the debtor listed only Schmidt, Bettencourt & Medeiros, LLP. If in fact the debtor retained the services of Baudler & Flanders during the two-year time period, or if the firm has books of account and records of the debtor, it appears the statement of affairs will need to be amended.

47.	14-25150-D-12 MF-8	HENRY TOSTA, JR. FAMILY, L.P.	MOTION TO EMPLOY RESIDENTIAL GROUP REAL ESTATE & LENDING AS BROKER(S) 6-20-14 [90]

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

Tentative ruling:

This is the debtor's motion to employ Don Burns, dba Residential Group Real Estate and Lending, to list, market, and sell a parcel of real property described in the motion. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, for the guidance of the parties, the court issues this tentative ruling.

The moving party failed to serve Green Tree Servicing and Harold Van Vliet Trucking, both listed on its Schedule D in significant amounts, at all, and failed to serve the State Water Resource Control Board, listed on its Schedule F, also in a significant amount. As a result of this service defect, the motion will be denied. In the alternative, the court will continue the hearing to allow the moving party to correct the service defect. The court will hear the matter.

48.	09-29162-D-11 11-2348 SHARP V. BLACKSTONE RANCH CORPORATION ET AL	SK FOODS, L.P. KAW-1	CONTINUED MOTION BY KIMBERLY A. WRIGHT TO WITHDRAW AS ATTORNEY 5-14-14 [155]

CASE DISMISSED 5/12/14

Final ruling:

This is the motion of Kimberly A. Wright to withdraw as counsel for defendants Blackstone Ranch Corporation and SS Farms, LLC. The hearing was continued because the proof of service failed to indicate that service had been made by United States Mail. On June 25, 2014, the moving party filed an amended proof of service which indicated that service was made by United States Mail, and further described the manner of such service. However, the amended proof of service stated that such service was made on June 25, 2014, the date of the original hearing, rather than on May 14, 2014, which was the date of service indicated in the original proof of service. If the moving party actually served the motion, notice of hearing, and

declaration on June 25, 2014, such service accomplished nothing, because those papers gave the hearing date as June 25, 2014. If the moving party did not serve the moving papers on June 25, 2014, but merely intended to amplify the original proof of service to describe the manner of the service that was made on May 14, 2014, she has failed to do that.

Accordingly, the motion will be denied without prejudice for failure to sufficiently demonstrate the manner in which service was made. No appearance is necessary.

49.	09-91476-D-7 JCK-5	KARLA CHANCELLOR	MOTION TO AVOID LIEN OF FINANCIAL PACIFIC LEASING, LLC 6-23-14 [37]
50.	14-25283-D-7 CJO-1 GREEN TREE SERVICING, LLC VS.	EDWARD FERNANDEZ	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-17-14 [9]
51.	14-26196-D-7 DL-1	MICHAEL/DANA AGUILAR	MOTION TO COMPEL ABANDONMENT 6-20-14 [10]