UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 13, 2016 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

1.	13-33804-D-7 BHS-4	RHONDA STIJAKOVICH-SANTILLI	MOTION FOR COMPENSATION FOR BARRY H. SPITZER, TRUSTEE'S ATTORNEY 6-13-16 [153]

Tentative ruling:

This is the motion of the trustee's counsel for a first and final allowance of compensation. The motion states that "the estate has approximately $75,000.00 in the bank as of June 13, 2016 as a result of the Debtor agreeing to pay that amount to the Trustee." Motion at 2:20-21. It appears the $75,000 in the estate results from some sort of settlement or compromise between the trustee and the debtor; however, no motion for approval of a compromise has been filed. The motion states those funds should be sufficient to pay all claims in full; however, nothing in Fed. R. Bankr. P. 9019 obviates the need for a motion to approve a compromise in that circumstance. The court intends to continue the hearing on this motion to permit the trustee to seek approval of any settlement or compromise that has been reached. The court will hear the matter.

2.	13-33804-D-7 DMW-3	RHONDA STIJAKOVICH-SANTILLI	MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S) 6-15-16 [160]

Final ruling:

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

3.	15-24411-D-7 SJS-2	MARTHA JOHNSON	MOTION FOR CONTEMPT 5-24-16 [35]

Tentative ruling:

This is the debtor's motion for an order holding Club Pacifica Apartments, LLC ("Club Pacifica") in contempt of the debtor's discharge order. Club Pacifica has not filed opposition. However, that does not by itself entitle the debtor to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the motion.

Service

The moving party failed to serve Club Pacifica in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b), and may not have served the entity that is the actual target of the motion at all. The moving party served Club Pacifica by certified mail to the attention of someone named Robert W. Dyess, Jr., at addresses in Benicia and Irvine, California. Service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, such as Club Pacifica, must be by first-class mail, not certified mail. See preamble to Rule 7004(b). (The moving party also served Club Pacifica by first-class mail, but with no attention line, whereas service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3).)

Further, Mr. Dyess' capacity with Club Pacifica – whether as an officer, managing or general agent, or agent for service of process – is not disclosed, and it is not clear he has anything to do with the particular Club Pacifica that is the target of this motion. The California Secretary of State lists two separate active entities – Club Pacifica Apartments, LLC and Club Pacifica, LLC. The motion names

the target initially as Club Pacifica Apartments, LLC, but later refers to it only as Club Pacifica. The Secretary of State lists Mr. Dyess as the agent for service of process of Club Pacifica, LLC, a Delaware LLC with an address in Cincinnati, Ohio. There is no evidence Club Pacifica, LLC, is the actual party to this motion. The Secretary of State lists Club Pacifica Apartments, LLC, as a Delaware LLC with an address in Chicago; its agent for service of process is C T Corporation System. There is no evidence of service on Club Pacifica Apartments, LLC, either through C T Corporation System or otherwise. The motion will be denied for failure to demonstrate proper service and for the following additional independent reason.

Merits

"A party who knowingly violates the discharge injunction can be held in contempt under section 105(a) of the bankruptcy code. . . . The party seeking contempt sanctions [here, the debtor] has the burden of proving, by clear and convincing evidence, that the sanctions are justified. . . . [T]he moving party 'must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction.'" ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (citations omitted).

Perhaps most important for the present motion, "[i]t is clear from our cases . . . that knowledge of the injunction is a question of fact that can normally be resolved only after an evidentiary hearing." ZiLOG, Inc., 450 F.3d at 1007. Knowledge cannot be presumed simply from the fact that the creditor received notice of the bankruptcy. Id. at 1007-08. Although knowledge of the discharge might be inferred from the fact that a creditor knew of the bankruptcy, "[s]uch an inference . . . would be a matter of fact, not a presumption implied in law. Knowledge of the injunction, which is a prerequisite to its willful violation, cannot be imputed; it must be found." Id. at 1008. It is not sufficient for a contempt finding that the creditor knew about the bankruptcy when he took the offending action. The debtor must demonstrate the creditor had actual knowledge of the discharge; if he did not, he cannot be found in contempt, even if he should have known of it. Id.

The debtor has failed to meet her burden of demonstrating by clear and convincing evidence that Club Pacifica violated the discharge order with actual knowledge of it. The debtor commenced this chapter 7 case on May 29, 2015 and received a discharge on September 21, 2015. On February 3, 2016, a collection agency named Systematic National Collections, Inc. ("Systematic") sent the debtor a collection notice "Re: Club Pacifica" for $1,985.50, the exact amount the debtor had listed on her Schedule F as being owed to Club Pacifica, plus $2.17 in interest. The debtor testifies:

> I was extremely concerned about this bill, because I listed it in my bankruptcy petition. I cannot come up with $1,987.67 to pay Club Pacifica. I was also shocked, because they are trying to charge 10% interest on this debt. It made me nervous, because they threatened [in the notice] to negatively report this to the credit bureaus and I am currently applying to rent a new place. I have further had to incur fees from my bankruptcy attorney to make sure that these illegal collection attempts do not continue.

Debtor's Decl., DN 37, at 2:7-12.

Neither the debtor nor her counsel tried to contact Systematic, which is the entity that sent the notice (or for that matter, Club Pacifica). They did not

telephone the 888 number listed on the collection notice or write to Systematic to notify it of the discharge.[1] There is no evidence Systematic knew about the bankruptcy case or the discharge when it sent the notice and no evidence Club Pacifica knew about the discharge when it apparently assigned the claim to Systematic. There is no evidence of any conduct on the part of either Club Pacifica or Systematic that constituted a willful violation of the discharge. This is a not a situation where a collection notice was sent, the debtor or her counsel advised the party who sent it of the discharge, and that party nonetheless continued to attempt to collect the debt. Instead, the debtor asks the court to infer a willful violation of the discharge from the fact that the Bankruptcy Noticing Center sent copies of the notice of bankruptcy filing and the discharge to Club Pacifica. Under ZiLOG, Inc., this type of inference is not appropriate.

The debtor adds, "It is unclear whether Club Pacifica will cease its collections activity, per Mwangi, Club Pacifica does so at its own peril." Debtor's Memo., DN 39, at 5:3-6. If Club Pacifica or Systematic does not cease collection efforts, the debtor is free to file a subsequent motion. The court will not speculate that either of them will continue to pursue the debtor once they have actual knowledge of the discharge.

For the reasons stated, the motion will be denied. The court will hear the matter.

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1 In fact, they did not serve this motion on Systematic or name it as a potential respondent.

4. 15-24411-D-7 MARTHA JOHNSON — MOTION FOR CONTEMPT
SJS-3 — 6-1-16 [42]

Tentative ruling:

This is the debtor's motion for an order holding Meridian Physical Therapy and Rehabilitation P.C. ("Meridian") in contempt of the debtor's discharge order. Meridian has not filed opposition. However, that does not by itself entitle the debtor to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the motion.

Service

The moving party failed to serve Meridian in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Meridian through its agent for service of process and to the attention of a named CEO, but in both cases by certified mail, whereas service on a corporation that is not an FDIC-insured institution, such as Meridian, must be by first-class mail. See preamble to Rule 7004(b). (The moving party also served Meridian by first-class mail, but with no attention line, whereas service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process. Rule 7004(b)(3).) The motion will be denied for failure to demonstrate proper service and for the following additional independent reason.

Merits

"A party who knowingly violates the discharge injunction can be held in contempt under section 105(a) of the bankruptcy code. . . . The party seeking contempt sanctions [here, the debtor] has the burden of proving, by clear and convincing evidence, that the sanctions are justified. . . . [T]he moving party 'must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction.'" ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006) (citations omitted).

Perhaps most important for the present motion, "[i]t is clear from our cases . . . that knowledge of the injunction is a question of fact that can normally be resolved only after an evidentiary hearing." ZiLOG, Inc., 450 F.3d at 1007. Knowledge cannot be presumed simply from the fact that the creditor received notice of the bankruptcy. Id. at 1007-08. Although knowledge of the discharge might be inferred from the fact that a creditor knew of the bankruptcy, "[s]uch an inference . . . would be a matter of fact, not a presumption implied in law. Knowledge of the injunction, which is a prerequisite to its willful violation, cannot be imputed; it must be found." Id. at 1008. It is not sufficient for a contempt finding that the creditor knew about the bankruptcy when he took the offending action. The debtor must demonstrate the creditor had actual knowledge of the discharge; if he did not, he cannot be found in contempt, even if he should have known of it. Id.

The debtor has failed to meet her burden of demonstrating by clear and convincing evidence that Meridian violated the discharge order with actual knowledge of it. The debtor commenced this chapter 7 case on May 29, 2015 and received a discharge on September 21, 2015. On August 31, 2015, Meridian sent the debtor a bill for $20.66, which the debtor testifies was for the portion of charges in March of 2015 that the debtor's insurance did not pay. According to the bill, checks were to be made payable to Meridian PT and Rehabilitation and mailed to that entity, at 4900 Hopyard Rd. Ste. 100, Pleasanton, CA 94588.

On October 16, 2015, Kyle Schumacher, Esq., as an Associate Attorney at Sagaria Law, PC, sent what appears to be a form notice addressed as follows: Meridian Physical Therapy & Rehabilitation P.C., Attn: Legalzoom.com, Inc., Registered Agent for Service, 100 West Broadway, Suite 100, Glendale, CA 91210. In contrast, the name and address of Meridian's agent for service of process, as registered with the California Secretary of State are Legalzoom.com, Inc., 101 N. Brand Blvd., 11th Fl., Glendale, CA 91203.[2] Mr. Schumacher's notice read in its entirety but for the salutation ("Legalzoom.com, Inc., Registered Agent for Service:") and signature block:

> I represent the debtor named in the attached court-generated bankruptcy document [the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines].
>
> My client has filed for bankruptcy. You must stop making harassing collection attempts.
>
> Please immediately return any seized funds, release any writs of garnishment and dismiss any pending judicial proceedings.
>
> These matters can usually be taken care of with a simple phone call. Please have your attorney contact me as soon as possible.

Debtor's Ex. A, p. 2.

Mr. Schumacher does not indicate why he did not try to resolve the matter by calling the 800 number listed on Meridian's bill for "Billing Questions." He does not explain why he sent the notice to Legalzoom.com and not to Meridian, why he used what appears to have been an incorrect address for Legalzoom.com, or why he did not send the notice to the address in Pleasanton at which Meridian was seeking payment.[3] Although the debtor's discharge had been entered by the time Mr. Schumacher sent this notice, he did not mention the discharge.

The debtor authenticates a second bill she received from Meridian, dated October 29, 2015, and two notices from a collection agency called TekCollect, dated February 9 and February 29, 2016. These notices increased slightly in amount, culminating in a demand for payment of $31.89. The debtor testifies:

> I am very concerned, because I do not want to have to be fighting Meridian the rest of my life on a $31.89 bill. If I did nothing this bill could increase immensely even though I think what they are doing is wrong. This letter [one of the notices] also stated "negligence ruins more credit than dishonesty." They are clearly being rude and calling me negligent or a liar and it is hurtful to receive this letter. I want to make sure I defend myself or they could start saying this to other people. After all, they state they may put this on my credit report.

Debtor's Decl., DN 44, at 2:16-22. The debtor's counsel took no action in response to either Meridian's second bill or TekCollect's collection notices until he filed this motion. At no time did he call or write to Meridian at the Pleasanton address set forth on its bills, and he did not call or write to TekCollect. He did not serve this motion on TekCollect, which has apparently taken over the account.

In short, the debtor listed Meridian on her schedules at an address in American Canyon and the Bankruptcy Noticing Center sent the notice of bankruptcy filing and later the discharge to that address. The debtor's counsel sent his notice of the bankruptcy filing (but not the discharge) to Legalzoom.com (at what appears to be an incorrect address), rather than to Meridian at the address on the bill that apparently triggered his concern. The debtor asks the court to infer a willful violation of the discharge from these notices. Under ZiLOG, Inc., this type of inference is not appropriate.

Finally, even if the debtor had demonstrated by clear and convincing evidence that Meridian had actual knowledge of the discharge when it sent its bills or when it apparently assigned the claim to TekCollect, the court would not be inclined to

award compensatory damages for emotional distress. In the similar situation of a violation of the automatic stay, the Ninth Circuit has held that emotional distress damages may be recovered under § 362(h) (Dawson v. Wash. Mut. Bank (In re Dawson), 390 F.3d 1139, 1148 (9th Cir. 2004)), but also that "not every willful violation merits compensation for emotional distress." Id. at 1149. Instead, "to be entitled to damages for emotional distress under § 362(h), an individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process)." Id. "Fleeting or trivial anxiety or distress does not suffice . . . ." Id. Absent corroborating medical or third-party evidence or an egregious violation, the court is to look for circumstances that "make it obvious that a reasonable person would suffer significant emotional harm." Id. at 1150.

Here, the debtor received several notices which, if accompanied by a showing of a willful violation, might justify an award of emotional distress damages. However, the amount claimed by the creditor is negligible. Further, a simple telephone call to the debtor's attorney should have alleviated the debtor's concern. And although the debtor is looking for a new place to rent, there is no indication the debt has actually been reported to the credit reporting agencies or has otherwise impacted her search. Similarly, the court is not persuaded that any significant amount of attorney's fees would be compensable absent evidence that measures simpler and less costly than a motion had failed to stop the collection notices.

For the reasons stated, the motion will be denied. The court will hear the matter.

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1 It is possible Legalzoom.com's address as Meridian's agent for service was on Broadway at the time Mr. Schumacher's notice was sent, but that is not demonstrated.

2 Meridian had not previously been notified of the bankruptcy filing at the Pleasanton address on the bill. Instead, the debtor had scheduled Meridian at an address in American Canyon, California.

5.	15-24611-D-7 ADJ-2	MICHAEL/SUSAN PAGE	MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES - MACKO FOR ANTHONY D. JOHNSON, TRUSTEE'S ATTORNEY(S) 6-14-16 [71]

Final ruling:

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

6. 16-22413-D-7 DMW-1 — THOMAS FRYE — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THOMAS MICHAEL FRYE 5-31-16 [12]

Final ruling:

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

7. 14-27519-D-12 WWB-11 — LOEK VAN WARMERDAM — AMENDED OBJECTION TO CLAIM OF FRANCHISE TAX BOARD, CLAIM NUMBER 13 5-26-16 [206]

Final ruling:

This matter has been resolved by order filed June 22, 2016 approving the stipulation of the parties. The matter is removed from calendar.

8. 14-27519-D-12 WWB-13 — LOEK VAN WARMERDAM — AMENDED OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 10 5-26-16 [202]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the revested debtor's objection to the priority status of the IRS Claim No. 10 is supported by the record. Accordingly, the court will disallow Claim No. 10 as a priority claim and allow the claim as a general unsecured claim. Moving party is to submit an appropriate order. No appearance is necessary.

9. 14-25820-D-11 16-2082 MCFARLAND V. BATTLE CREEK STATE BANK ET AL — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION TO DISMISS ADVERSARY PROCEEDING MBL-1 6-1-16 [7]

Tentative ruling:

The defendant has filed a motion to withdraw the reference in the District Court which is set for hearing on July 25, 2016 at 1:30 p.m. The court finds it appropriate for the District Court to rule on the motion to withdraw the reference before this court hears the defendant's motion to dismiss. Accordingly, the hearing on this motion to dismiss will be continued to August 24, 2016 at 10:00 a.m. The parties may appear at this hearing telephonically.

10. 16-21920-D-7 DAYNE/WHITNEY DELANO — CONTINUED MOTION TO COMPEL ABANDONMENT
FF-1 — 4-27-16 [11]

Final ruling:

The hearing on this motion is continued to July 27, 2016 at 10:00 a.m. to be heard at the same time as the trustee's related motion to approve compromise. No appearance is necessary.

11. 16-22725-D-11 PETER/CATHLEEN VERBOOM — CONTINUED VOLUNTARY PETITION
4-28-16 [1]

Final ruling:

This case was converted to a Chapter 7 on July 5, 2016. As a result, this Chapter 11 status conference is concluded. No appearance is necessary.

12. 15-23231-D-7 DEAN ENGEL — MOTION FOR COMPENSATION BY THE LAW OFFICE OF BARRY H. SPITZER FOR BARRY H. SPITZER, TRUSTEE'S ATTORNEY
BHS-2 — 6-8-16 [58]

Tentative ruling:

This is the motion of the trustee's counsel for a first and final allowance of compensation. The motion states the trustee employed counsel to assist him regarding a lawsuit concerning the debtor's share of his father's trust, an asset the debtor failed to list on his schedules. The motion states that "[t]he lawsuit and any proceeds from a settlement were property of the bankruptcy estate." Motion, DN 58, at 2:2-3. The motion adds that "the estate has approximately $90,334.00 in the bank as of June 7, 2016 as a result of the Trustee intervening in the matter on the Debtor's father's trust." Id. at 2:10-11. It appears the $90,334 in the estate results from some sort of settlement or compromise of the estate's claims regarding the trust; however, no motion for approval of a compromise has been filed. The court intends to continue this hearing to permit the trustee to seek approval of any settlement or compromise that has been reached. The court will hear the matter.

13. 15-24433-D-7 WILLIAM INDREBOE — MOTION TO SELL
CDH-2 — 6-15-16 [21]

Tentative ruling:

This is the trustee's motion to approve the sale of the estate's 50% interest in shares of stock of Dutycalc Data Systems, Inc. The motion was noticed pursuant to LBR 9014-1(f)(1) and no opposition has been filed. However, the court is not prepared to hear the motion at this time for the following reason. The motion states that the sale will be subject to overbidding; however, the notice of hearing, which is the only document served on creditors, does not mention overbidding and does not contain any of the information about the corporation that is contained in the motion. The court intends to continue the hearing to permit the trustee to file a notice of continued hearing in which interested parties are to be advised of the possibility of overbidding, of the information about overbidding that is set forth in the motion, and of the information about the corporation that is known to the trustee. The court recognizes that under the circumstances of this particular sale, the likelihood of overbidding is not great; however, creditors and other interested parties, if any, should have been notified of the possibility.

The court will hear the matter.

14. 16-22134-D-7 STANLEY MAYFIELD CONTINUED MOTION FOR SANCTIONS
UST-1 5-3-16 [10]

Tentative ruling:

This is the motion of the United States Trustee (the "UST") for imposition of sanctions against attorney Pauldeep Bains ("Counsel") for violating LBR 9004-1(c).[1] Counsel has filed opposition, the UST has filed a reply, and Counsel has filed a supplemental reply. For the following reasons, the motion will be granted.

Counsel, as counsel for the debtor in this case, filed the petition, schedules, statement of financial affairs, statement of current monthly income, statement of intention, verification of master address list, and statement of social security number, all with signatures that had been created by the debtor using an electronic service called DocuSign. In other words, the debtor never put pen to paper to sign these documents. The UST contends this procedure violated Rule 9004-1(c)(1)(C) and (D) because the DocuSign affixation is a software-generated signature and Counsel, as the registered user filing the documents, did not accurately represent that originally signed copies of the documents existed and were in his possession at the time of filing, as required by Rule 9004-1(c)(1)(C), and could not have produced and did not produce the originally signed documents for review when requested by the UST, as required by Rule 9004-1(c)(1)(D), because originally signed documents never existed. Thus, the issue presented here is whether the DocuSign affixation is a software-generated electronic signature for the purpose of Rule 9004-1(c).

Counsel engages in some rather strenuous mental gymnastics to support his position that the affixation created by DocuSign is an original signature and not a software-generated electronic signature for purposes of the local rule.[2] He begins with the evidence rule definition of an "original" writing – "the writing . . . itself or any counterpart intended to have the same effect by the person who executed or issued it." Fed. R. Evid. 1001(d). He also cites 1 U.S.C. § 1, which states that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise– . . . 'signature' or 'subscription' includes a mark when the person making the same intended it as such . . . ." Finally, he cites two dictionary definitions of "signature" as a "mark or sign" made by an individual to represent his name or to signify knowledge, approval, acceptance, or obligation. These rule, statute, and dictionary definitions all focus on the intent of the person making the mark or sign.

Therefore, Counsel has had the debtor sign a declaration in which the debtor testifies he intended and expected the affixation he caused DocuSign to place on the documents by clicking the "Sign Here" button to be adopted and treated as his actual signature. The debtor adds he finds the DocuSign process to be secure and convenient. The declaration bears the debtor's signature in cursive handwriting; it is dated a week after the UST requested Counsel produce copies of the debtor's original wet signatures.

Most of Counsel's arguments deriving from the rule, statutory, and dictionary definitions depend on the declaration: "the Debtor's intentions are clear and concisely laid out in the declaration"; "it is clear that after reading [the declaration], we can be certain that the Debtor intended each mark that was created after he clicked the 'Sign Here' button to be his signature"; "the Debtor has made it clear that the signatures on [the petition and other documents] through his signed [declaration] is his name or a mark representing his name, marked by

himself." Counsel's Memo., DN 20, at 2:25-26, 3:8-10, 3:18-20.

The declaration belies the arguments. If Counsel were correct that the DocuSign affixation complied with the local rule, the declaration would have been unnecessary and Counsel would not need to depend on it to support his position. The local rule is designed to enable the court and parties-in-interest to rely on the signatures on the petition, schedules, and other documents as the debtor's original signatures without need of a subsequent declaration with a handwritten signature confirming the debtor's intent. When the debtor's signatures on the documents are in his own handwriting, the need for a subsequent declaration concerning his intent is eliminated absent a genuine suspicion that the handwritten signatures were forged.

This brings the court to another important problem with Counsel's arguments: they do not address the ease with which a DocuSign affixation can be manipulated or forged. The UST asks what happens when a debtor denies signing a document and claims his spouse, child, or roommate had access to his computer and could have clicked on the "Sign Here" button. Counsel's response is telling: "[The declaration] alleviates any possibility that the Debtor did not actually sign the document himself. He has signed under penalty of perjury a Declaration stating that it was in fact him that signed the documents." Memo. at 5, n.3. Again, had the debtor simply signed the documents in his own handwriting, the declaration would have been unnecessary. The essential point is that an individual's handwritten signature is less easily forged than any form of software-generated electronic signature, and the presence of forgery is more easily detected and proven.

The flaw appears clearly when Counsel's position is considered in connection with a typewritten name on a signature line: the name may well have been typed by the debtor and intended by him to represent his signature, and if so, under Counsel's analysis, it would satisfy the local rule. Yet it may also have been typed by someone else and not intended by the debtor to be his signature, and the person reviewing the document, critically, cannot tell the difference.

Counsel relies on the court's use of the term "manual" in Rule 9004-1(d) as demonstrating the court's intent that "the image of an original manual signature" on a fax copy or PDF document includes not just the image of a signature made with a pen but also the image of a DocuSign affixation. Citing three dictionary definitions, Counsel concludes "manual" means "done with the use of your own hands [and not] automatically" (Memo. at 6:20-21); he adds that the debtor used his own hand to click on the "Sign Here" button, as the debtor testified in his declaration. Counsel finds it important that DocuSign requires a separate "Sign Here" click for each signature rather than allowing one click to populate the signature lines on all the documents, which he claims would be an "automated process." This distinction is strained at best, and here again, the argument would apply equally to a name typed on a signature line by the debtor using his own hands, one key at a time, which Counsel does not suggest would comply with the local rule.

Counsel's analysis fails for another important reason: the rule makes a distinction between an "originally signed document" and a "software-generated electronic signature." Under Rule 9004-1(c)(1)(C), if a registered user files a document with a software-generated electronic signature of someone else, the filer certifies an originally signed document exists and is in the filer's possession. Under the rule, the "software-generated signature" must be something different from the document bearing the "original signature." Otherwise, it would not be separately identified in the local rule, and there would be no reason for the

requirement that the filer retain possession of the "original signature" if that same document had already been scanned and electronically filed. If Counsel's position were correct, the rule would make no sense.[3]

In an effort to overcome this conclusion, Counsel contrives his own personal definition of "software-generated electronic signature," as used in the local rule, and purports to distinguish it from "electronic signature," as defined in the ESIGN Act, 15 U.S.C. §§ 7001-7031. A DocuSign affixation, he claims, is the latter not the former; thus, it complies with the local rule. In Counsel's view, the "plain meaning" of "software-generated electronic signature" in the local rule is "a signature placeholder, one that can be put by anyone, including someone other than the signer" (Counsel's Supp. Reply, DN 25, at 3:20-21), as distinguished from an "electronic signature," as defined in the ESIGN Act.[4] Counsel's distinction does not work for the reasons already discussed and because the ESIGN Act does not apply to documents filed in bankruptcy cases and its definitions have no bearing on the interpretation of the court's local rules.

The ESIGN Act provides that "with respect to any transaction in or affecting interstate or foreign commerce–(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form." 15 U.S.C. § 7001(a)(1). However, that provision does not apply to "court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings." 15 U.S.C. § 7003(b)(1). Further, DocuSign's website itself states that the Act "grants legal recognition to electronic signatures and records, if all parties to a contract choose to use electronic documents and to sign them electronically." U.S. electronic signature laws and history. docusign.com/esign-act-and-ueta. Web 17 June 2016. A bankruptcy case is not a contract where all parties have agreed to use electronic signatures.

The court finds that a DocuSign affixation is a software-generated electronic signature, as distinguished in the local rule from an originally signed document. Although DocuSign affixations and other software-generated electronic signatures may have a place in certain commercial and other transactions, they do not have a place as substitutes for wet signatures on a bankruptcy petition, schedules, statements, and other documents filed with the court, and they do not comply with this court's local rule. The court agrees with the UST that requiring attorneys to maintain their clients' handwritten signatures "helps ensure the authenticity of documents filed with the Court." UST's Reply, DN 23, at 5:4-5. Treating software-generated electronic signatures as original signatures would, as the UST contends, "increase the possibility of confusion and mischief in the signature process (especially where less scrupulous e-filers are involved)" (id. at 5:15-16), whereas distinguishing them helps to protect the integrity of the bankruptcy system.[5] The convenience of the debtor and the debtor's attorney pales when put up against the need to protect the integrity of the documents filed in bankruptcy cases. Put simply, documents with the significant legal effects of a bankruptcy petition and related documents, especially documents signed under the penalty of perjury, must, absent contrary rules adopted by a higher rule-making authority, be signed in ink, and the attorney or party presenting them for filing must retain and produce the pages bearing the original signatures in accordance with the local rule.

For the reasons stated, the court intends to grant the motion and impose the penalty the UST suggests – Counsel will be ordered to complete the online e-filing training on the court's website and to file a declaration verifying that he has done so. The court will hear the matter.

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1 Unless otherwise indicated, all rule references are to this court's local rules.

2 At best, Counsel's interpretation is aggressive if not strained. It would have been prudent for Counsel to seek a determination from the court as to what the local rule requires rather than taking it on himself to make the determination.

3 Counsel makes much of the fact that the local rule of the bankruptcy court for the Northern District of California uses the term "original ink signature," whereas this court's rule does not. Counsel incorrectly concludes that the absence of the word "ink" in this court's rule authorizes the use of a DocuSign affixation as an "original signature." The argument has virtually no relevance to the analysis of this court's local rule.

4 The Act defines an "electronic signature" as "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." 15 U.S.C. § 7006(5).

5 Counsel notes that the debtor in this case "has never denied signing the documents." Supp. Reply at 3:25. Therefore, in Counsel's view, he and the debtor "should not be penalized because the UST feels that a Debtor 'could' deny signing the documents." Id. at 3:25-26. This argument assumes the rules governing signatures on bankruptcy documents may appropriately differ on a case-by-case basis, an option the court obviously rejects.

15.	10-26347-D-7 16-2037 BURKART V. BRACK	LESLIE BRACK CDH-1	MOTION FOR ENTRY OF DEFAULT JUDGMENT 6-8-16 [13]

Tentative ruling:

This is the motion of the plaintiff, Michael Burkart, who is the trustee in the underlying chapter 7 case (the "trustee") for entry of default judgment against the defendant, David Brack. The motion was noticed pursuant to LBR 9014-1(f)(1) and the defendant has not filed opposition. However, for the following reason, the court is not prepared to grant the motion absent further information.

The defendant is the debtor's former spouse and, at the commencement of the underlying chapter 7 case, was an owner with the debtor of a community property interest in a certain real property the trustee has since sold, receiving net proceeds of $40,489.59. By his complaint in this adversary proceeding, the trustee seeks a declaration that the entire amount of the proceeds is property of the estate and also a judgment against the defendant in the amount of $60,486 on account of spousal support payments the trustee alleges were due the debtor as of the commencement of the chapter 7 case.

On the subject of this court's jurisdiction, the trustee contends this action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E) (orders to turn over property of the estate) and (O) (other proceedings affecting the liquidation of assets of the estate). Citing Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison, 134 S. Ct. 2165, 2175 (2014), the trustee requests that if the

court finds it does not have the authority to enter a final judgment, that the court hear the matter and submit proposed findings of fact and conclusions of law to the district court. The defendant has not filed a proof of claim in the parent bankruptcy case, such as would evidence his consent to this court's jurisdiction. However, it appears he has earlier entered into a settlement agreement with the trustee (discussed below) that affected substantive rights of the defendant and that was subject to this court's approval. The court concludes from that settlement agreement that the defendant has consented to this court's jurisdiction, and the court will proceed to rule on the motion.[1]

The summons and complaint have been served on the defendant, who has failed to answer or otherwise plead within the time permitted, and the defendant's default has been entered. Thus, the well-pleaded allegations in the trustee's complaint, except for allegations regarding the amount of damages, are deemed admitted. Fed. R. Civ. P. 8(b)(6). The legal sufficiency of those claims, however, is not admitted. Cripps v. Life Ins. Co., 980 F.2d 1261, 1267 (9th Cir. 1992); Cashco Fin. Servs. v. McGee (In re McGee), 359 B.R. 764, 772 (9th Cir. BAP 2006). "[A] default establishes the well-pleaded allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." McGee, 359 B.R. at 772.

The court may conduct hearings to "establish the truth of any allegation by evidence" or to "investigate any other matter." Fed. R. Civ. P. 55(b)(2)(C) and (D). Factors the court must consider in deciding whether to enter a default judgment include the following: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel, 782 F.2d at 1471-72. Resolution of disputes on their merits is generally favored over default judgments. See id. at 1472.

Before the court can address these factors, there is an apparent legal impediment to the relief requested that needs to be cleared up. On July 27, 2015, the trustee filed a motion in the parent case to approve a compromise with David Brack – the same David Brack who is the defendant in this adversary proceeding. The motion was granted by order filed September 9, 2015. The motion and the settlement agreement itself addressed and purported to resolve disputes between the trustee and Mr. Brack regarding both the proceeds of sale of the real property and the debtor's claim against him for back spousal support – the precise issues raised by the trustee in this adversary proceeding. In the motion to approve the compromise, the trustee stated that "[a]fter many months of negotiating these disputed issues with Mr. Brack, he has now agreed to forfeit any claim that he may have in the net sale proceeds of the [real property] and pay an additional amount of $5,000.00" (Trustee's Motion, DC No. MFB-4, DN 46 in Case No. 10-26347 ("Compromise Mot."), at 6:8-13), in exchange for which "all claims of the Trustee against David Brack in connection with the spousal support claim shall be fully and completely satisfied." Id. at 6:15-16.

In addressing the Woodson factors (In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988)), the trustee stated that the settlement would provide sufficient funds to pay administrative claims in full and a dividend of approximately 70% on general unsecured claims. He added that "[w]ithout this proposed settlement, the Trustee would be required to litigate the disputed issues between Mr. Brack and the Estate

with regard to the community property rights [in the real property proceeds] as well as the amount owing under the spousal support claims." Compromise Mot. at 7:4-7. The Trustee stated he would "immediately file a Trustee's Final Report and Proposed Distribution under the Estate and then make a distribution to the unsecured within a few months." Id. at 7:11-13. The settlement agreement itself stated, "Excepting the obligations imposed by this Agreement, the Trustee on behalf of the Estate, hereby relieves, releases, and discharges David Brack . . .from any and all claims, debts, liabilities, [and so on] including but not limited to claims that are or relate to the subject matter of this Agreement." Trustee's Ex. 7, DN 48 in Case No. 10-26347, ¶ 6(a).

The court can only infer that Mr. Brack has either re-asserted an interest in the sale proceeds or failed to make the $5,000 payment required under the compromise or both, and that the trustee commenced this adversary proceeding for that reason. However, the trustee will need to confirm this and demonstrate that his claims against Mr. Brack are not encompassed in the general release in the settlement agreement. The trustee may be relying on a provision in the settlement agreement that states "[e]ach of the acts to be undertaken pursuant to this Agreement is interdependent and each is a condition precedent to the validity and enforceability of this Agreement" (id. at ¶ 7(m)), but the moving papers do not mention it. Indeed, they do not mention the compromise at all. Therefore, given the record as it now stands, the court is not in a position to conclude the trustee's claims against the defendant, on which the trustee seeks a default judgment, are meritorious.

The court will hear the matter.

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1 If in fact the defendant never signed the settlement agreement, the court will need to revisit this issue.

16. 16-21649-D-7 MICHAEL LUEVANO — MOTION TO COMPEL ABANDONMENT
FF-2 — 6-15-16 [34]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtor's motion to compel the trustee to abandon property and the debtor 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. The moving party is to submit an appropriate order. No appearance is necessary.

17. 16-22156-D-7 SCOTT/TRINA HALE — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
JFL-3
U.S. BANK, N.A. VS. — 6-7-16 [13]

Final ruling:

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

18.	15-27561-D-7 15-2244 GATEWAY ONE LENDING & FINANCE V. BARRY	SIMONAE BARRY TJP-2	MOTION FOR ENTRY OF DEFAULT JUDGMENT AND/OR MOTION TO STRIKE 6-9-16 [21]

Tentative ruling:

This is the plaintiff's motion for "an Order entering a Default" against the defendant, or in the alternative, striking the defendant's answer to the plaintiff's complaint.[1] The defendant has not filed opposition. For the following reasons, the court intends to continue the hearing and require the defendant, on the plaintiff's motion to compel which is also on this calendar, DC No. TJP-3, to provide the Rule 26(a) initial disclosures, with terminating sanctions to be entered against the defendant if she does not immediately comply.

The complaint in this adversary proceeding was filed December 17, 2015, nearly seven months ago. The defendant filed her answer on January 15, 2016. On December 21, 2015, the defendant was served with the court's Order to Confer on Initial Disclosures and Setting Deadlines ("Order"), by which the parties were ordered to (1) meet and confer at a discovery conference; and (2) within 14 calendar days after the discovery conference, to make the initial disclosures required by Fed. R. Civ. P. 26(a). The Order set forth the categories of the disclosures required. The parties held their discovery conference by telephone on January 27, 2016. According to their joint discovery plan, filed February 8, 2016, neither party raised any objection to making the initial disclosures. The parties stipulated that the defendant's deposition would be taken on or close to April 20, 2016, and that the discovery cutoff date should be set on or after June 29, 2016.

Pursuant to the Order, the defendant's Rule 26(a) initial disclosures were due 14 days after the date of the discovery conference, or by February 10, 2016. As of the date the plaintiff filed this motion, June 9, 2016, the defendant had failed to provide the disclosures despite the plaintiff's counsel's repeated written and verbal reminders that the disclosures were required by the Order and his requests that they be immediately provided. At a second status conference in this matter, the defendant stated that after a conference held under the court's Bankruptcy Dispute Resolution Program ("BDRP"), she had decided to get an attorney to represent her. The court advised the parties it would continue the status conference for 60 days and expressly advised the defendant the continuance would be for her to get an attorney on board within a couple of weeks so that any required disclosures might be made. The BDRP conference took place on April 5, 2016 and the status conference on April 28, 2016. The plaintiff's counsel sent the defendant another letter that was delivered by Federal Express on May 13, 2016, requesting the defendant provide the initial disclosures within five days and cautioning her that if she did not, the plaintiff would file a motion to compel the disclosures and/or to strike the defendant's answer. Yet the defendant has apparently still failed to make the disclosures.

The initial disclosures are fundamental to the process of adversary proceedings in bankruptcy cases and to the parties' ability to assess and prepare their cases. They often lay the groundwork for further discovery requests and settlement discussions and sometimes for summary resolution of cases. There is nothing mysterious or tricky about the disclosures: each party is simply required to provide the names, addresses, and telephone numbers of his or her potential witnesses; copies of all documents and other tangible things relevant to the

allegations in the pleadings (in the defendant's case, all documents and other things relevant to her denial of the plaintiff's allegations against her); information about damages; and copies of insurance policies that may provide coverage. Here, in the six and one-half months since the Order was served, and despite her signature on the joint discovery plan indicating she had no objection to making the disclosures and indicating that a discovery cutoff date on or after June 29, 2016 would be appropriate, the defendant has still failed to provide any of the required information or documents to the plaintiff.

Under applicable rules, a party failing to provide initial disclosures will not be allowed to use the undisclosed information or witnesses at trial unless the failure was substantially justified or was harmless. Fed. R. Civ. P. 37(c)(1), incorporated herein by Fed. R. Bankr. P. 7037. In addition to or instead of that sanction, the court may order the party to pay the other party's reasonable costs and attorney's fees caused by the failure, may strike the pleadings of the party failing to comply, and may render a default judgment against that party. Fed. R. Civ. P. 37(c)(1)(A) and (C) and (b)(2)(A)(iii) and (vi), incorporated by Fed. R. Bankr. P. 7037. A sanction in the form of striking a party's answer and entering his or her default is commonly referred to as a terminating sanction, because it terminates the party's right to a trial on the merits. "A terminating sanction, whether default judgment against a defendant or dismissal of a plaintiff's action, is very severe." Conn. Gen. Life Ins. Co. V. New Images of Beverly Hills, 482 F.3d 1091, 1096 (9th Cir. 2007). As a result, the violation giving rise to the sanction "must be due to the 'willfulness, bad faith, or fault' of the party." Jorgensen v. Cassiday, 320 F.3d 906, 912 (9th Cir. 2003) (citations omitted). "Disobedient conduct not shown to be outside the control of the litigant is sufficient to demonstrate willfulness, bad faith, or fault." Id. (citation omitted).

The defendant has filed nothing in opposition to this motion and has failed to demonstrate that her failure to comply with the Order was beyond her control. Her failure to provide the initial disclosures has hindered the plaintiff's prosecution of the case, including its ability to conduct meaningful further discovery and, possibly, its ability to participate in the BDRP conference in a meaningful way. The court finds the defendant's failure to make the initial disclosures was not substantially justified and was not harmless. Therefore, the court is inclined to grant the plaintiff's motion. However, due to the severity of terminating sanctions, the court will give the defendant one last opportunity to provide the required disclosures. The court will not strike the defendant's answer and enter her default until the defendant has had the clear notice provided by this ruling that the court will take those steps if she does not immediately provide the initial disclosures. The court will continue the hearing on this motion to August 10, 2016 at 10:00 a.m., and grant the plaintiff's motion to compel and require the defendant to provide the initial disclosures to the plaintiff no later than July 27, 2016. If the defendant fails to provide the disclosures by that date, the court will grant this motion, strike the defendant's answer, and direct the clerk to enter her default. The court will then permit the plaintiff to file a motion for entry of a default judgment against the defendant.

The court will hear the matter.

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1 In the opening and closing paragraphs of the motion, the plaintiff requests the court order that default be entered against the defendant, but elsewhere, refers to the court entering a default judgment against the defendant. Obtaining a default judgment is a two-step process. See Eitel v. McCool, 782

F.2d 1470, 1471 (9th Cir. 1986). First, the clerk of the court enters the default of the party who has failed to plead or otherwise defend; the clerk or the court, depending on the nature of the plaintiff's claim, then enters a default judgment. Fed. R. Civ. P. 55(a) and (b), incorporated herein by Fed. R. Bankr. P. 7055. In this case, the defendant's default has not yet been entered and the plaintiff has not made the necessary evidentiary showing for entry of a default judgment. Thus, upon the striking of the defendant's answer by the court, the next step will be for the clerk to enter the defendant's default, and the plaintiff may then file a motion for entry of a default judgment.

19.	15-27561-D-7 15-2244 GATEWAY ONE LENDING & FINANCE V. BARRY	SIMONAE BARRY TJP-3	MOTION TO COMPEL 6-9-16 [26]

Tentative ruling:

This is the plaintiff's motion for an order compelling the defendant to produce the initial disclosures required by Fed. R. Civ. P. 26(a), incorporated herein by Fed. R. Bankr. P. 7026, and for monetary sanctions in the form of attorney's fees and costs, pursuant to Fed. R. Civ. P. 37(a)(3)(A), incorporated herein by Fed. R. Bankr. P. 7037. The defendant has not filed opposition. For the following reasons, the court intends to grant the motion in part.

The necessary background to this matter is set forth in the court's ruling on the plaintiff's motion for entry of default against the defendant, or in the alternative, for an order striking the defendant's answer, DC No. TJP-2, also on this calendar. The court hereby incorporates that ruling herein. The applicable rules permit the court to order a party to provide the initial disclosures. Fed. R. Civ. P. 37(a)(3)(A). Based on the court's findings in its ruling on the motion for entry of default, the court will grant this motion to compel and order the defendant to provide the initial disclosures to the plaintiff no later than July 27, 2016. The court will defer a ruling on the plaintiff's request for attorney's fees and costs until the time of trial or a hearing on a motion for entry of a default judgment.

The court will hear the matter.

20.	14-26862-D-7 DMW-7	VLADIMIR/YELENA TIMCHUK	MOTION FOR COMPENSATION FOR DOUGLAS M. WHATLEY, CHAPTER 7 TRUSTEE 6-15-16 [82]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation under Bankruptcy Code § 326(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

21. 16-22073-D-7 ALONZO/MICHELLE WADE — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 6-7-16 [14]
ACAR LEASING LTD VS.

Final ruling:

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

22. 16-23378-D-7 LUIS GUTIERREZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 6-9-16 [11]
BMW BANK OF NORTH AMERICA
VS.

Final ruling:

This matter is resolved without oral argument. This is BMW Bank of North America's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

23. 16-23309-D-7 ALMA CARO RODRIGUEZ — CONTINUED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
5-20-16 [5]

24. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC. — ORDER TO SHOW CAUSE
15-2054 — 6-20-16 [19]
MCFARLAND V. LEMKE ET AL

25. 15-20131-D-7 HCS-3 — RICHARD/DIANA BRAMWELL — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RICHARD BRAMWELL, JR. 6-22-16 [33]

26. 15-28774-D-7 SSA-2 — OTASHE GOLDEN — MOTION TO EMPLOY DAVID WALKER AS SPECIAL COUNSEL 6-23-16 [39]

Tentative ruling:

This is the trustee's application to employ David Walker, of Damrell Nelson Schrimp Pallios Pacher & Silva ("Special Counsel"), to evaluate litigation commenced by the debtor which is presently pending in the district court for this district. The application was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns. First, the application states the trustee seeks to employ Special Counsel nunc pro tunc to May 11, 2016, but it does not address the THC Financial factors for retroactive employment of professionals. See In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988). That date is six weeks before the date the application was filed, which is a longer period than the court normally allows without an analysis of the THC Financial factors. In this instance, absent opposition, the court will grant the trustee's request; however, Special Counsel's employment will not be approved as of any date earlier than May 11, 2016 without evidence satisfying the THC Financial factors.

Second, the application states that Special Counsel's billing rate is $350 per hour and that a fee application will be submitted at the conclusion of his services; however, the title of the application indicates the trustee is seeking to "set [the] terms and conditions of [the] fee agreement." There is no fee agreement filed with the motion and no mention of the terms and conditions of the employment except that the billing rate is $350 per hour. The court will not approve any particular hourly rate at this time, but (assuming the court's other concerns are addressed and there is no opposition) will approve the employment based on the "lodestar rate" applicable at the time services are rendered in accordance with the Ninth Circuit's decision in In re Monoa Finance Co., 853 F.2d 687 (9th Cir. 1988). The court will determine the appropriate lodestar rate on subsequent fee applications.

Next, the application states Special Counsel is being employed to review and analyze the lawsuit, determine its merits and value, the substance and validity of the affirmative defenses, and the counterclaims advanced by the defendants. There is no indication as to whether, if the trustee decides to proceed with the litigation, it is contemplated Special Counsel will also be employed to represent him in the litigation, and if so, what the terms of Special Counsel's employment for those services would be. If the trustee does decide to proceed and if Special Counsel is employed on a contingency fee basis for representing the trustee in the

litigation, the court would expect the hourly fees earned in the employment to be approved on this application to be credited against any contingency fee earned on account of Special Counsel's services in the litigation. Otherwise, it appears Special Counsel would ultimately be paid a contingency fee plus hourly fees for investigative services generally encompassed within a contingency fee; that is, for services that are normally part of the services covered by a contingency fee.

Finally, the supporting declaration of David B. Walker is not sufficient to demonstrate that he and his firm are eligible to be employed, and it does not comply with LBR 2014-1. Mr. Walker states: "To the best of my knowledge, information and belief, I have not held nor do I have any adverse interest to the Estate. I understand that my representation is of the Estate. Based on these facts, I believe that I am a disinterested person within the meaning of 11 U.S.C. § 101, and am eligible to serve as special counsel for the Trustee in this case." Walker Decl., DN 41, at 2:1-4. These are conclusions the court is to draw from the connections disclosed by the professional proposed to be employed; it is not up to the professional to draw these conclusions. Pursuant to Fed. R. Bankr. P. 2014(a), the "person" proposed to be employed is required to set forth the connections between the person (here, both Mr. Walker and the firm, including all of its members and employees), on the one hand, and the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, and any person employed in the office of the United States Trustee, on the other hand.

The disclosure requirements of Rule 2014 are applied strictly. Neben & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park-Helena Corp.), 63 F.3d 877, 881 (9th Cir. 1995). "[T]he attorney has the duty to disclose all relevant information to the court, and may not exercise any discretion to withhold information." Kun v. Mansdorf (In re Woodcraft Studios), 464 B.R. 1, 8 (Bankr. N.D. Cal. 2011). The disclosures are required so that the court may determine whether a professional's connections render him or her ineligible for employment under § 327(a). Thus, "the duty to disclose extends to '[a]ll facts that may be pertinent to a court's determination of whether an attorney is disinterested or holds an adverse interest to the estate,' regardless of whether the attorney thinks the information is sufficient to render him adversely interested." Id., citing Park-Helena, 63 F.3d at 882. Thus, Mr. Walker will need to file a supplemental declaration for the court's review, in which he addresses all the connections required to be disclosed.

The court will hear the matter.

27.	16-23783-D-7 MC-1	YENG VUE	MOTION TO AVOID LIEN OF CAVALRY PORTFOLIO SERVICES, LLC 6-29-16 [13]

28. 13-35288-D-7 DUSTIN/KAREN BOLE MOTION FOR ABANDONMENT
6-21-16 [26]

Final ruling:

This matter is resolved without oral argument. This is a motion filed by the debtors to order the abandonment of certain counterclaims as being burdensome or of inconsequential value to the estate. The debtors signed and filed the motion and notice as if they were pro se debtors, but they are not. They are represented by counsel of record in this case. This court's local rules do not provide for debtors to pick and choose certain actions to be taken by their attorney of record and other actions to be taken by the debtors in pro se. Because the motion was not signed and filed by the debtors' attorney of record, the motion will be denied without prejudice.

The court notes there are several procedural defects with the motion that will need to be addressed if another motion is filed. First, the moving papers do not include a docket control number, as required by LBR 9014-1(c). Second, the notice purports to require the filing of written opposition not less than 14 days prior to the hearing date, whereas the moving parties gave only 22 days' notice of the hearing rather than 28 days', as required by LBR 9014-1(f)(1) for a notice requiring written opposition. Third, the moving parties served some but not all of the scheduled creditors.[1]

The motion be denied without prejudice by minute order. No appearance is necessary.

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1 Fed. R. Bankr. P. 6007(a) requires the trustee or debtor-in-possession to "give notice of a proposed abandonment or disposition of property to the United States trustee [and] all creditors . . . ." On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, even though the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a). See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)).

29. 13-35288-D-7 DUSTIN/KAREN BOLE MOTION FOR ABANDONMENT
14-2097 6-21-16 [153]
GENERAL COUNCIL OF THE
ASSEMBLIES OF GOD V. BOLE ET

Final ruling:

This matter is resolved without oral argument. This is a motion filed by the debtors to order the abandonment of certain counterclaims. The motion was filed in the debtors' parent bankruptcy case and in this adversary proceeding because the debtors utilized the captions of both cases on their moving papers. Motions for abandonment are appropriately filed in parent bankruptcy cases; the court knows of no situation in which the filing of a motion for abandonment in an adversary proceeding would be appropriate or necessary, and it is not appropriate or necessary here. The matter will therefore be removed from calendar. No appearance is necessary. So that the docket in the adversary proceeding will be clear, the court notes that the motion, as filed in the parent bankruptcy case, is being denied without prejudice.

30.	15-29890-D-7 MMS-1 SCHWARTZ RIMBERG & MORRIS, LLP VS.	GRAIL SEMICONDUCTOR	CONTINUED AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY 6-7-16 [364]