UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 23, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

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

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

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

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1. 14-26304-D-11 THERESA SIMMONS — STATUS CONFERENCE RE: VOLUNTARY PETITION
6-16-14 [1]

2. 14-26304-D-11 THERESA SIMMONS — MOTION TO EMPLOY THOMAS B. SHERIDAN AS ATTORNEY
TBS-2 — 6-18-14 [10]

Final ruling:

This is the motion of the debtor-in-possession in this case to employ Thomas B. Sheridan and Sheridan Clark, LLP as her attorneys in this case. The motion was noticed pursuant to LBR 9014-1(f)(1); no timely opposition has been filed. However,

the court is not prepared to grant the motion at this time for two reasons. First, the moving party failed to serve all creditors in this case at the required addresses. The moving party failed to serve Hawaiian Shores Community Association, added to the debtor's Schedule F by amendment filed June 19, 2014, 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).

Second, the supporting declaration is insufficient to allow the court to determine that Mr. Sheridan and Sheridan Clark, LLP (the "firm") are disinterested persons and that they do not hold or represent an interest adverse to the estate, as required by § 327(a) of the Bankruptcy Code. The declaration is by Thomas Sheridan, who testifies that "Attorney has no connection with Debtor, its [sic] creditors or any other party in interest, their respective attorneys or accountants, the U.S. Trustee, or any person employed in the Office of the U.S. Trustee." Decl., filed June 18, 2014, at 2:14-16. The problem is that the declaration uses the terms "Counsel" and "Attorney" variously, without defining either. Thus, the court cannot determine whether "Attorney," as used in the quoted sentence, refers to Mr. Sheridan and the firm or just Mr. Sheridan, whereas it is clear the debtor has employed the firm. Mr. Sheridan is reminded that the rule requires disclosure of connections between the persons named in the rule 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), incorporated in the rules by Fed. R. Bankr. P. 9001.

Further, although the motion states that "Attorney does not have any pre-petition claims for fees against Debtor or the Estate," and "is not owed any compensation for pre-petition work" (Mot., filed June 18, 2014, at 2:18-20), the supporting declaration does not include those representations. Finally, the declaration is not signed in the manner required by LBR 9004-1(c)(1)(A); that is, by the use of an "/s/" with the declarant's name typed in the space where the signature would otherwise appear. The motion and notice of hearing evidence Mr. Sheridan's signature by the use of an "/s/" and his name typed on the signature line; however, the declaration purports to evidence signature by use of an "/s/" only, without Mr. Sheridan's name.

The hearing will be continued to August 13, 2014, at 10:00 a.m., the moving party to file a notice of continued hearing (pursuant to LBR 9014-1(f)(2) – no written opposition required) and serve it on Hawaiian Shores Community Association and the Franchise Tax Board, at its Roster address, no later than July 23, 2014. The moving party shall filed a proof of service no later than July 25, 2014. The moving party shall also file supplemental evidence in support of the motion no later than July 25, 2014, which shall (1) disclose all connections between the firm and the persons named in Fed. R. Bankr. P. 2014(a), (2) address whether Mr. Sheridan or the firm has any pre-petition claim against the debtor or the estate, and whether either is owed any compensation for pre-petition work, and (3) evidence signature in the appropriate format.

The hearing will be continued by minute order. No appearance is required on July 23, 2014.

3. 14-26304-D-11 THERESA SIMMONS — MOTION FOR ORDER APPROVING PAYMENT OF ORDINARY MONTHLY LIVING EXPENSES
TBS-3 — 6-18-14 [17]

Tentative ruling:

This is the debtor's motion for an order approving the payment of monthly living expenses in the ordinary course of her affairs. The motion will be denied as unnecessary – the debtor is not prohibited from paying ordinary and reasonable living expenses unless the funds she plans to use constitute cash collateral. The motion does not indicate that the funds proposed to be used are cash collateral. Once the debtor begins to collect rents on properties that are subject to one or more deeds of trust, as she anticipates, she will need to file a motion to authorize the use of cash collateral.

The court will hear this matter.

4. 14-26304-D-11 THERESA SIMMONS — MOTION TO VALUE COLLATERAL OF ONE WEST BANK AND/OR MOTION TO AVOID LIEN OF FRANCHISE TAX BOARD AND COUNTY OF SACRAMENTO
TBS-4 — 6-18-14 [22]

Tentative ruling:

This is the debtor's motion to value collateral of OneWest Bank (the "Bank") and to avoid and strip off as wholly unsecured certain tax liens held by the Franchise Tax Board (the "FTB") and the County of Sacramento (the "County"). The Bank has filed opposition. For the following reasons, the court intends to deny the motion as to the County of Sacramento and to continue the hearing as to the Bank and the FTB.

First, the moving party failed to serve the County in strict compliance with Fed. R. Bankr. P. 7004(b)(6), as required by Fed. R. Bankr. P. 9014(b). The moving party served the County to the attention of its "Tax Collection & Licensing Division," whereas a public entity, including a state agency, must be served by service on "the clerk, secretary, president, presiding officer, or other head of its governing body." Fed. R. Bankr. P. 7004(b)(6) and Cal. Code Civ. Proc.416.50(a).

The Bank opposes the motion, alleging that on June 16, 2014, prior to the commencement of this case, the Bank completed its foreclosure on the property in question, with the result that the property is not property of the estate, and thus, is not subject to valuation under § 506(a) of the Bankruptcy Code. The Bank has submitted no evidence in support of its position, and in fact, its conclusion seems unlikely, as the debtor's petition commencing this case was filed at 6:28 a.m. on June 16, 2014. The court will continue the hearing to allow both parties to submit supplemental evidence on the issues of ownership of the property and, if it appears the property is property of the estate, on the remaining merits of the motion.[1]

The court will hear the matter.

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1 As an aside, the debtor's counsel is cautioned against mixing the concepts of valuing collateral and avoiding liens, as has been done here. (The motion refers to valuing collateral of the Bank but to avoiding the liens of the FTB and the County.) Valuing collateral and avoiding liens are two different matters. Compare § 506(a) with § 522(f). It merely confuses matters to utilize the term "avoiding a lien" when what the debtor actually intends, as here, is to value collateral.

5. 14-26304-D-11 THERESA SIMMONS — MOTION TO VALUE COLLATERAL OF PENNYMAC AND/OR MOTION TO AVOID LIEN OF HAWAII SHORES COMMUNITY ASSOCIATON (HOA)
TBS-5 — 6-18-14 [26]

Tentative ruling:

This is the debtor's motion to value collateral of PennyMac Loan Services, LLC ("PennyMac") and to avoid and strip off as wholly unsecured a homeowners' association lien held by Hawaiian Shores Community Association ("Hawaiian Shores"). No timely opposition has been filed, and as to PennyMac, the relief requested in the motion is supported by the record. Thus, as to PennyMac, the court will grant the motion and, for purposes of plan confirmation only, sets PennyMac's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that PennyMac's secured claim is in the amount set forth in the motion for the purpose of plan confirmation.

As to Hawaiian Shores, the motion will be denied because the moving party failed to serve that entity in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Hawaiian Shores to the attention of Eileen O'Hara, whereas, pursuant to Fed. R. Bankr. P. 7004(b)(3), a corporation, partnership, or other unincorporated association must be served to the attention of an officer, managing or general agent, or agent for service of process. Here, there is no evidence Eileen O'Hara occupies any of those roles for Hawaiian Shores.[1]

The motion will be granted as against the Bank and denied as against Hawaiian Shores Community Association. The court will hear this matter.

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1 As an aside, the debtor's counsel is cautioned against mixing the concepts of valuing collateral and avoiding liens, as has been done here. (The motion refers to bifurcating PennyMac's claim into secured and unsecured amounts based on the alleged value of the property, but to avoiding the lien of Hawaiian Shores.) Valuing collateral and avoiding liens are two different matters. Compare § 506(a) with § 522(f). It merely confuses matters to utilize the term "avoiding a lien" when what the debtor actually intends, as here, is to value collateral.

6. 11-21506-D-12 JPJ-1 — THOMAS/KAREN JONES — MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS 6-6-14 [82]

7. 14-23206-D-7 MDE-1 — NATHAN NEWELL — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 6-17-14 [20]
CITIMORTGAGE, INC. VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on July 11, 2014 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

8. 12-40315-D-11 — OLUSEGUN/YVONNE LERAMO — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 6-25-14 [164]

9. 14-21317-D-7 APN-1 — ALINA LEBEDCHIK — MOTION FOR RELIEF FROM AUTOMATIC STAY 6-19-14 [31]
TOYOTA LEASE TRUST VS.

Final ruling:

This matter is resolved without oral argument. This is Toyota Lease Trust'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.

10. 14-22923-D-7 HECTOR NAVARRO
PD-1
JPMORGAN CHASE BANK, N.A.
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-14 [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 debtor received his discharge on June 30, 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.

11. 14-23125-D-7 HAVEN/DAVID RITCHIE
PJR-2

OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
6-4-14 [31]

Final ruling:

This is the objection of Tri Counties Bank to the debtors' amended claim of exemptions filed May 5, 2014. The trustee has joined in the objection, and the debtors have filed opposition. As the debtors point out, they have filed a further amended claim of exemptions, on July 9, 2014, which renders this objection moot. The court passes no judgment on the debtors' other contentions in their opposition.

As a result of the amended Schedule C the objection will be overruled as moot by minute order. No appearance is necessary.

12. 13-29030-D-7 WILLIAM/JANET CHENG
GMR-2

MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)
6-17-14 [509]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. This is the motion of Michael Gabrielson, of Gabrielson & Company, for a first interim allowance of compensation as the trustee's accountant. The debtors have filed opposition. For the following reasons, the motion will be granted.

First, the debtors make a variety of allegations concerning the circumstances of the trustee's sale of certain real property, which have nothing to do with the services provided by the accountant; thus, those arguments are rejected as not relevant to the motion. The debtors also claim the accountant has misstated his services, as listed in his billing statement filed as an exhibit, in turn, as verified by his supporting declaration. The debtors' claims are either (1) based on alleged conversations with unidentified individuals at the Internal Revenue Service and the Franchise Tax Board, which are inadmissible hearsay (Debtors' Opp., ¶¶ 12-15, 17); (2) based on the debtors' opinions, which are inadmissible as the debtors have not shown they have any qualifications to render an expert opinion on the subject covered (¶ 18); (3) based on a misunderstanding of a billing entry (¶¶ 19, 20); or (4) based on an unsupported conclusion about the identity of a predecessor accountant referred to in one of the billing entries (¶ 16).

Nothing in the debtors' opposition persuades the court that the fees are misstated or otherwise inappropriate. 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.

13.	13-29030-D-7 HCS-5 **Final ruling:**	WILLIAM/JANET CHENG	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG TRUSTEE'S ATTORNEY(S) 6-25-14 [515]

The court finds that a hearing will not be helpful and is not necessary. This is the motion of Herum\Crabtree\Suntag, for a first interim allowance of compensation as the trustee's attorneys. The debtors have filed opposition. For the following reasons, the motion will be granted.

The debtors' opposition is a compilation of their various complaints about the trustee's conduct of this case during the year it has been pending. They claim, again, that he "cancelled their chapter 7 bankruptcy" (Debtors' Opp., at 1:27-28), failed to give them adequate notice of various matters, illegally sold certain of their real property, engaged in collusion and conspiracy with others, and so on. The debtors also complain that the court, in connection with various motions, failed to inform them of tentative rulings, and forced them out of hearings; they also contend they have been denied their due process rights and civil rights and have been denied equal treatment under the laws. These allegations have been addressed by the court in earlier rulings on various motions. As raised again here, they are nothing more than opinions and conclusions. And based on the court's extensive knowledge of what has transpired in this case, at least on the docket and in court hearings, the court concludes that the allegations are unfounded.

Nothing in the debtors' opposition persuades the court that the requested fees and costs are misstated or otherwise inappropriate. The record establishes, and the court finds, that the fees and costs requested, as voluntarily reduced by the moving party, 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.

14.	14-25130-D-7	ROBERT GREEN	MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 5-15-14 [5]

15. 14-24631-D-7 ROBERT/DEANNA ROUSE — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 6-16-14 [13]
TD AUTO FINANCE, LLC VS.

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 debtors are 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 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). There will be no further relief afforded. No appearance is necessary.

16. 12-26444-D-7 MARY JUIP — MOTION TO EMPLOY PMZ REAL ESTATE AS REALTOR(S)
HCS-3 — 6-16-14 [114]

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 PMZ Real Estate as realtor is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

17. 13-33444-D-7 JOHN/JUANITA CASKEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
RWR-1 — 6-19-14 [18]
WELLS FARGO BANK, N.A. VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on January 27, 2014 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

18. 14-22547-D-7 LAZARO DELGADO — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
BHT-1 — 6-24-14 [19]
OCWEN LOAN SERVICING, LLC VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on July 3, 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.

19. 14-25148-D-12 HENRY TOSTA
CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
5-15-14 [1]

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

20. 14-25148-D-12 HENRY TOSTA
MF-5
CONTINUED MOTION TO EMPLOY MATTHEW J. OLSON AS ATTORNEY(S)
6-4-14 [55]

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

21. 14-25150-D-12 HENRY TOSTA, JR. FAMILY, L.P.
CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
5-15-14 [1]

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

22. 14-25150-D-12 HENRY TOSTA, JR. FAMILY, L.P.
MF-5
CONTINUED MOTION TO EMPLOY MATTHEW J. OLSON AS ATTORNEY(S)
6-4-14 [55]

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

23. 13-25654-D-7 KENNETH/APRIL GOORE — MOTION TO COMPEL ABANDONMENT
DMA-1 — 6-19-14 [38]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon real and personal 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 by minute order. No appearance is necessary.

24. 13-31754-C-13 VICTOR/SVETLANA PARSHIN — CONTINUED MOTION FOR THE COURT'S DETERMINATION OF THE REASONABLE VALUE OF THE SERVICES OF JEFFERY YAZEL
UST-2 — 2-28-14 [64]

Final ruling:

This case was converted to a case under Chapter 13 on June 26, 2014 and subsequently transferred to Department C. As a result this motion is continued to July 29, 2014 at 2:00 p.m. to be heard by Hon. Christopher Klein (Courtroom 33). No appearance is necessary on July 23, 2014.

25. 09-29162-D-11 SK FOODS, L.P. — MOTION TO DISGORGE FEES
DB-28 — 6-24-14 [4885]

Final ruling:

This matter has been continued by stipulated order to August 13, 2014, at 10:00 a.m.

26. 13-35762-D-12 JOSE DASILVA — MOTION FOR COMPENSATION FOR MARIE B. KELLY, ACCOUNTANT
MF-11 — 6-20-14 [147]

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 for compensation for Marie B. Kelly, Accountant is supported by the record. As such the court will grant the motion for compensation for Marie B. Kelly, Accountant by minute order. No appearance is necessary.

27. 14-25263-D-7 STEVEN QUIPP — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
5-19-14 [5]

28. 12-36866-D-7 MARK/RENEE GARETS — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-1
HSBC BANK USA, N.A. VS.
6-13-14 [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 debtors received their discharge on December 17, 2012 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

29. 11-22685-D-7 BLUE RIBBON STAIRS, INC. — MOTION FOR RELIEF FROM AUTOMATIC STAY
WSH-7671
KB HOME GREATER LOS ANGELES, INC. VS.
6-3-14 [1154]

Final ruling:

This matter is resolved without oral argument. This is KB Home Greater Los Angeles, Inc.'s motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

30. 13-28288-D-7 MICHAEL MATRACIA — MOTION TO RECONVERT TO CHAPTER 11 CASE
TMP-3 — 6-20-14 [105]

Tentative ruling:

This is the debtor's motion to convert this chapter 7 case back to chapter 11. (It was converted from chapter 11 to chapter 7 on December 13, 2013.) The trustee opposes the motion. For the following reasons, the motion will be denied.

The debtor earlier filed two motions to dismiss this chapter 7 case; both were denied. The present motion makes essentially the same argument as the motions to dismiss; in a nutshell, that the debtor does not wish to discharge his debts but to "reorganize [them] to a manageable amount." Debtor's Motion to Convert, filed June 20, 2014 ("Mot."), at 3:20-21. The debtor adds a gloss in this motion, based on the following remark the trustee made in her opposition to his second motion to dismiss: "The Debtor in his motion states that the creditors would be better protected in Chapter 11, but he is not asking to convert the case, he is asking that the case be dismissed. There is no guarantee that if the case is dismissed the Debtor will re-file a Chapter 11 case." Trustee's Opp., filed May 28, 2014, at 2:14-16. The debtor has seized on this language, claiming that reconversion to chapter 11 would protect creditors from the possibility he would not file a new chapter 11 case, and thus would assure them that the court would retain jurisdiction over his assets.

Notwithstanding that argument, the debtor has completely failed to address the very pertinent issue that he has already received a chapter 7 discharge in this case. The court raised this issue in its rulings on his two motions to dismiss, noting that the debtor had submitted no authority for the proposition that the court may vacate a discharge simply because the debtor wishes to proceed outside of bankruptcy, and that the court was not aware of any such authority. Similarly, the court is aware of no authority for the proposition that the court may vacate a discharge because the debtor wishes to convert the case. As in his motions to dismiss, the debtor has ignored this issue here.

Also significant is the debtor's argument that the trustee is not likely to recover the amounts she believes she will, for two reasons. First, although the debtor testified under oath on April 15, 2014, in an amended Schedule B, that he had $16,000 in a Wells Fargo debtor-in-possession account ending in 5368, of which he claimed only $5 as exempt, "[i]n reality, there is only $9,001 in [the account]." Mot. at 4:18-19. The debtor has submitted as an exhibit a letter from the bank confirming that amount as the balance in the account. The debtor expresses no qualms about having taken $6,000 worth of property of the estate without court approval and, apparently, without the trustee's knowledge. This behavior only supports the conclusion that the debtor has no intention of repaying his creditors, but seeks only to prevent the trustee from collecting non-exempt assets for the benefit of creditors.

In addition, the trustee states there is $6,300 of unprotected equity in the debtor's 2005 Calabria ski boat, an asset the debtor listed on his original Schedule B with an unknown value. It was only after the trustee opposed his first motion to dismiss the case that the debtor filed an amended schedule, disclosing the boat's value as $23,300, $6,300 more than the amount due on the boat, as listed on the debtor's Schedule D.[1] The debtor now claims he has not made payments on the boat for the past 12 months, with the result that the equity has been depleted by $2,772.

Given that fact, and considering the costs the trustee will incur in selling the boat, the debtor estimates the trustee will net $3,000 at most. The trustee does not indicate she has demanded turnover of the boat, only that she has had several conversations with the debtor about it. The court, however, is not impressed by the debtor's conduct in this case – including his failure to appear for at least one session of the meeting of creditors and including the two motions to dismiss the case and this motion to convert, all while allowing the debt on the boat, which clearly had non-exempt equity at the time, to increase. This behavior does not support the debtor's claim that he wishes to repay his creditors.[2]

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

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1 It was also on that amended Schedule B, filed ten months into the case, that the debtor, a landscape contractor, disclosed for the first time $7,300 in tools and equipment used in his business.

2 In its ruling on one of the debtor's motions to dismiss, the court pointed out that entry of a discharge does not prevent a debtor from voluntarily repaying his debts. See § 524(f) of the Code. The debtor's apparent willingness to pursue that avenue only in the context of a chapter 11 case undercuts the credibility of his claim that he wishes to repay his debts, suggesting instead that his purpose is to prevent the trustee from liquidating any of his assets.

31.	13-34988-D-7 JRR-1	KAREN NELSON	MOTION TO SELL 6-24-14 [27]
32.	14-22492-D-12 PGM-1	CHARLES CORNELL	CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN 4-29-14 [31]

33. 14-22492-D-12 CHARLES CORNELL — CONTINUED MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC
PGM-2 — 4-29-14 [35]

34. 08-31697-D-11 BRIAN/PATRICIA WARREN — MOTION TO CONVERT CASE TO CHAPTER 7
DL-4 — 6-10-14 [424]

Tentative ruling:

This is the motion of creditors Jim Young and Carol Young to convert this chapter 11 case to a case under chapter 7 of the Bankruptcy Code. The debtors have filed opposition. For the following reasons, the court finds cause to dismiss or convert the case pursuant to § 1112(b)(1) of the Code, and will hear from parties-in-interest as to which of those would be in the best interests of creditors and the estate.

Under the terms of the debtors' chapter 11 plan, confirmed by order dated February 6, 2010, holders of allowed general unsecured and undersecured claims were to be paid 9% of the amounts of their claims. The debtors were required to make payments to those creditors totaling $1,000 per month, to be distributed pro rata, beginning one month after the plan was confirmed, or by March 6, 2010. On their original schedules, filed with their petition on August 21, 2008, the debtors listed the Youngs on Schedule D as being owed $40,000 secured by certain real property. The space for the "unsecured portion, if any" was left blank. On an amended Schedule D filed October 8, 2008, the debtors listed the Youngs, again on their Schedule D for $40,000, but this time, they listed the unsecured portion as $40,000. On both the original schedules and the amended schedules, none of the debts, neither secured, priority, nor general unsecured, was listed as disputed, contingent, or unliquidated. Thus, pursuant to § 1111(a) of the Code and Fed. R. Bankr. P. 3003(b)(1),[1] the confirmed plan required the debtors to commence making payments to, among others, the Youngs, beginning in March of 2010, over four years ago. Instead, the Youngs have submitted admissible evidence, and the debtors do not deny, that they have made no payments at all to the Youngs on account of their allowed claim.[2]

The Youngs also submitted declarations to the effect that certain of their fellow general unsecured creditors have not been paid either. In response, the debtors have submitted (albeit not in admissible form) copies of the fronts and backs of cashed checks that, in admissible form, would show that two of those creditors have in fact been paid. However, one of those two, Peters Drilling, was paid by way of a single lump-sum payment for 9% of its claim amount by check dated July 12, 2013, whereas the other, Anderson's Sierra Pipe, was paid in monthly installments beginning in 2010 that gradually became less frequent until it was finally paid off in December of 2013. Thus, it is clear that general unsecured creditors were not paid pro rata, as required by the confirmed plan, and at least

one of them was not paid at all until more than three years had passed since the debtors were required to begin making payments to all of them. Further, the Youngs have submitted a declaration of a third fellow creditor, Paul Ferreira, dba Don Robinson Sand & Gravel, stating that he has not received any payments on his claim. The debtors acknowledge that they have made no payments on this claim, despite the fact that they listed Don Robinson Sand & Gravel on both their original and amended Schedules F as being owed $7,782.

Apparently, the reason the Youngs and Don Robinson Sand & Gravel – and 13 other general unsecured claims [3] – have not been paid is that they either filed late claims or did not file proofs of claim at all, a circumstance the debtors now propose to belatedly remedy as to the Youngs; that is, as to a single one of those 15 claimholders. The debtors state in their opposition:

> The last day to file claims in Debtors' case was January 5, 2009. Youngs filed their claim on January 6, 2009. The claim was not timely filed. Debtors now recognize that under 11 USC 1111(a) Youngs' claim is deemed filed and, contingent upon the court denying this motion, are tendering the sum of $3,600.00 as payment of the claim pursuant to the provisions of the plan.

Debtors' Opp., filed July 8, 2014 ("Opp."), at 1:24-2:2.[4] In other words, the debtors propose, over four years late, to remedy their earlier alleged misunderstanding of the law by paying the required 9% of a single one of 15 claims that were scheduled by them not once but twice – on August 21, 2008 and again on October 8, 2008 – as undisputed, non-contingent, and liquidated (and as to that single claim, only if this motion to convert the case is denied). Thus, the debtors have defaulted for over four years in their obligation to pay 9% to the holders of $215,107 worth of claims,[5] yet now, when their default is brought to light, they propose to finally make payment on only $40,000 worth of those claims.

As to the balance, the $175,107 in claims on which they have not been paying because the creditors either filed a late claim or no claim at all, the debtors have devised a solution that smacks of gamesmanship and bad faith – they have filed an amended Schedule F on which they testify under oath that every single claim except the claim of Jack and Laura Warren, who may safely be presumed to be relatives of the debtors, is disputed. Thus, by a stroke of the pen, the debtors suddenly claim that 38 claims previously scheduled by them under oath, not once but twice, as undisputed, non-contingent, and liquidated, are disputed. The newly-amended Schedule F includes not just those 15 claims discussed above but also the claims of the creditors who filed timely proofs of claim, claims on which the debtors now claim they have made the 9% payments. Thus, the debtors would, by this convenient contrivance, continue to prejudice those creditors who relied on § 1111(a) and Rule 3003(b)(1) and the debtors' two much, much earlier sets of schedules to not file proofs of claim.

But the debtors have not stopped there. They have also reduced, apparently arbitrarily, the amount of every single scheduled claim except the $350,000 claim of Jack and Laura Warren. Thus, they have reduced the amounts of every claim except that one from the amounts the debtors themselves previously scheduled twice as undisputed, non-contingent, and liquidated. The majority have been reduced to $500 each, although they originally ranged from $1,146 to $34,708, and the remainder have been reduced by varying amounts, apparently chosen at random. Thus, the debtors' Schedule F now looks wildly different from the original and first amended versions:

	Original & first amended versions [6]	Amended Schedule F, filed July 8, 2014
American Express	$ 9,162	$ 7,800
Carol & Jim Young [7]	40,000	40,000
Chevreaux Aggregates	39,645	5,000
Foster & Son Trucking, Inc.	7,292	5,000
Internal Revenue Service	19,360	19,360
Jack & Laura Warren	350,000	350,000
Peters Drilling	11,882	5,000
Tamara Allen	5,076	500
United Rentals	18,978	5,000
84 Lumber	1,302	500
Anderson's Sierra Pipe	8,817	5,000
AT&T Yellow Pages	4,331	500
Bank of America	10,176	500
Bank of America	8,161	500
Bank of America	31,971	500
Bank of America	23,115	500
Capital One	3,442	500
Capital One	2,024	500
Chase	18,053	500
CitiBank	24,440	500
CitiBank	3,065	500
CitiBank	8,118	500
Clicksmart	2,655	500
Discover Card	8,395	500
Don Robinson Sand/Gravel	7,782	500
Exchange Bank	12,662	500
Gold & Green Equipment	2,438	500
Gottschalks	1,146	500
HBE Rentals	12,695	500
Home Depot Credit	22,549	500
JPMorgan Chase Bank	5,142	500
Kaiser Foundation Health	2,021	500
Lowes Commercial Svcs.	2,253	500
New Home Building Supply	1,559	500
Thunder Mountain	34,708	500
Travelers Insurance	8,190	500
U.S. Bank	27,011	500
Wells Fargo Bank	6,203	500

The debtors have not explained the purpose of this strategy, and the court can think of no explanation that would rebut the conclusion that the newly-amended schedule is simply false, both in the amounts of the claims and in the assertion that all the claims except the debtors' relatives' claim are, more than four years after the debtors were to begin making payments on the claims, suddenly disputed.

As indicated, the amended Schedule F has been filed with no explanation at all.[8] Instead, the debtors point to the requirement that they commence paying a total of $1,000 per month to their general unsecured creditors, beginning in March of 2010, adding that they should therefore have paid a total of $52,000 through June of 2014 (52 months @ $1,000 each), and noting that they have actually paid a total of $52,030 to those general unsecured creditors who filed timely proofs of claim.[9]

Thus, in their view, "Debtors are current on their plan payments." Opp. at 2:22. The problem with this rationale is that it is based on the proposition that § 1111(a) and Rule 3003(b)(1) do not apply to these debtors. In other words, in the debtors' view, it is perfectly acceptable that they have completed their payments to those creditors who filed timely proofs of claim, at 9% each, while paying nothing to the 15 creditors, including the Youngs, who either did not file proofs of claim or filed late claims. Thus, creditors in the same class have not been paid pro rata, as required by the plan, and those who have not been paid would, even if the debtors intended to pay them, which apparently, they do not, bear the risk of non-payment on a go-forward basis.

The court concludes that the debtors are in material default of the terms of the confirmed plan. At the very least, they have failed to make any payments to the Youngs or Don Robinson Sand & Gravel, a fact the Youngs have demonstrated by way of admissible evidence and which the debtors do not dispute. Further, the debtors do not dispute that they have made no payments on any claims of creditors originally listed as undisputed, non-contingent, and liquidated who did not file timely proofs of claim. Further, the cancelled checks filed by the debtors as exhibits demonstrate that at least one creditor, Peters Drilling, was paid nothing until July of 2013, while at least one other creditor, Anderson's Sierra Pipe, was paid in installments, beginning in 2010.[10] This too violated the terms of the confirmed plan, which expressly states that the debtors will distribute pro rata payments to the general unsecured creditors. The fact that the debtors have opposed this motion without proposing to pay any of the 15 creditors who did not file claims or who filed late claims except the Youngs, despite the debtors' asserted newfound awareness of § 1111(a), leads the court to conclude that the debtors do not intend to comply with the terms of the plan.[11] Finally, the debtors' strategy of amending their Schedule F, almost six years after the case was filed and over four years after the plan was confirmed, to list all creditors except their relatives as disputed, and to reduce the scheduled amounts of all those claims, again, except that of their relatives, without explanation and in amounts that defy reason, clearly constitutes bad faith. For these reasons, cause exists to convert or dismiss the case.

Pursuant to § 1112(b)(1) of the Code, the court must determine whether conversion or dismissal is in the best interests of creditors and the estate. The Youngs seek conversion on the grounds that (1) the debtors' material defaults under the terms of the plan call for the appointment of a trustee to provide oversight, and (2) there is valuable real property that should be revested in the estate and administered for the benefit of creditors. The first ground has obvious merit. As to the second, the property in question is a 71-acre parcel of bare land in Auburn, California, which the debtors were in the process of subdividing when this case was filed. According to their disclosure statement, the market in late 2009 was such that they did not expect to be able to finalize the development of the property and sell it. However, as cited by the Youngs, motions filed by the debtors in 2010 and 2012 indicated they were contemplating subdividing the property.[12] The court has no evidence of the current value of the property or the amount of the senior lien against it, or of other assets that might be available to provide a distribution to creditors. Finally, the court is not convinced the language of the plan and disclosure statement was sufficient to allow the property to be revested in the estate under applicable law. See Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 264 F.3d 803, 807-808 (9th Cir. 2001). The court will hear from parties-in-interest as to whether conversion or dismissal would be in the best interests of creditors and the estate.

Finally, the court intends to strike the debtors' amended Schedule F, filed July 8, 2014, as having been filed in bad faith and as being prejudicial to creditors. See Martinson v. Michael (In re Michael), 163 F.3d 526, 529 (9th Cir. 1998) [amendment of schedules may be disallowed on a showing of bad faith or prejudice to creditors.].

The court will hear the matter.

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1 "A proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(a)(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated." § 1111(a).

"The schedule of liabilities filed pursuant to § 521(1) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c) (2) of this rule [not applicable]." Fed. R. Bankr. P. 3003(b)(1) (emphasis added).

2 The debtors' explanation for this default is discussed below.

3 Chevreaux Aggregates, Tamara Allen, United Rentals, 84 Lumber, AT&T Yellow Pages, Bank of America (account ending in -7121), Citibank (account ending in -0433), Citibank South Dakota, Clicksmart, Gold & Green Equipment, Kaiser Foundation Health Plan, Travelers Insurance, and U.S. Bank.

4 The suggestion that the debtors were unaware of the effect of § 1111(a) and Rule 3003(b)(1) is undercut by this language in their disclosure statement:

> What Is an Allowed Claim or Allowed Equity Interest?
>
> Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or in an unknown amount, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest.

Disclosure Statement dated December 2, 2009, filed Dec. 3, 2009, at 10:21-24. Further, the debtors' confirmed plan provides that:

> A disputed claim is a claim that has not been allowed or disallowed, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

Exhibit A to Order Confirming Plan, filed Feb. 6, 2010, at 4:3-5.

5 That is the total of the amounts scheduled by the debtors as being owed on the claims of the Youngs, Don Robinson Sand & Gravel, and the 13 other creditors listed

in the second footnote preceding this one.

6 These are the Schedules D and F filed August 21, 2008 and October 8, 2008. The first nine on this list appeared on both earlier Schedules D as secured creditors but in amounts listed as wholly unsecured. They now appear on the newest version of Schedule F.

7 The moving parties here.

8 In the event the debtors plan to cite Fed. R. Bankr. P. 1009(a), providing that schedules "may be amended by the debtor as a matter of course at any time before the case is closed," the argument will not be favorably received. First, this case has already been closed and reopened. Second, the rule does not stand for the proposition that a debtor may amend schedules by pulling numbers out of the air or changing undisputed claims to disputed claims, for the sole purpose of defeating allowed claims he or she would prefer not to pay, although he or she provided for such payment in a confirmed plan. A debtor always has a duty of careful, complete, and accurate reporting in his or her schedules and statements. 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). Rule 1009(a) does not change that.

9 Of that amount, $31,500 was paid to Jack and Laura Warren.

10 The debtors have not given the dates the other creditors were paid.

11 The debtors state, "Don Robinson Sand & Gravel (Paul Ferreira) did not file a claim." Opp. at 2:5-6. Nowhere do the debtors indicate they intend to make any payments on that claim or the other 13 claims for which the creditors filed late proofs of claim or no proofs of claim, and the debtors' newly-amended Schedule F strongly suggests they have no such intention.

12 In fact, a motion filed in September of 2010 stated that "[t]he Debtor's approved plan calls for the subdividing of this property into four lots and then selling the lots to generate the fund to pay creditors." Motion [for Order] Granting Authority . . ., filed Sept. 29, 2010, at 2:1-3. Debtor Brian Warren testified in his supporting declaration, "As part of our plan, we are subdividing the property into four parcels and selling each parcel to pay off Mr. Spencer and fund our plan." Decl., filed Sept. 29, 2010, at 1:24-26.

35. 08-31697-D-11 BRIAN/PATRICIA WARREN OBJECTION TO CLAIM OF CAROL AND
WSS-30 JIM YOUNG, CLAIM NUMBER 28
Tentative ruling: 6-17-14 [440]

This is the debtors' objection to the claim of Jim Young and Carol Young, who have filed opposition. For the following reasons, the objection will be sustained.

The debtors object to the claim, first, on the ground that it was filed January 6, 2009, after the claims bar date, which was January 5, 2009. The Youngs oppose the objection on the grounds that (1) it is barred by the doctrine of laches; and (2) neither the debtors' original nor their amended schedules listed the claim as contingent, unliquidated, or disputed. The laches argument is based on the theory that disallowance of the claim "would prohibit [the Youngs] to receive payments pursuant to the terms of the Plan." Youngs' Opp., filed July 9, 2014, at 3:18-19. As discussed below, that theory is incorrect; thus, the laches argument fails.

Citing §1111(a) of the Code and Fed. R. Bankr. P. 3003(b)(1), and the fact that the debtors twice scheduled their claim as liquidated, non-contingent, and undisputed, the Youngs contend "the Claim is deemed filed and valid and the objection to the proof of claim should be overruled." Id. at 4:10-11. This analysis improperly conflates the effect of the Youngs' filed proof of claim with their "deemed allowed" claim, put into play by the debtors' scheduling of the claim as liquidated, non-contingent, and undisputed. There is no basis on which a late-filed claim should be "allowed" simply because the debtors scheduled it in that fashion.

By the same token, however, the disallowance of the proof of claim on the ground it was filed late will not have the effect of disallowing the Youngs' claim entirely because the "deemed filed" claim will stand. See Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.), 293 B.R. 489, 498 (9th Cir. BAP 2003). If the proof of claim had been timely filed, it would have superseded the "deemed filed" claim. "A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(a)(1) of the Code." § 3003(c)(4) (emphasis added). However, because the filed proof of claim was "procedurally incorrect" (Varela, 293 B.R. at 498); that is, because it was filed late, it "[did] not destroy the effect" of the "deemed filed" claim. Id. "If the superseding claim is defeated on a procedural ground such as timeliness of filing, the 'deemed allowed' claim springs back into effect." Id. Thus, the fact that the Youngs have a claim that is deemed allowed in this case, by virtue of the manner in which the debtors scheduled it, is not a ground for allowing the late-filed proof of claim.[1]

The Youngs have not disputed the fact that their proof of claim was filed late. Thus, the objection will be sustained, and the claim, as represented by the proof of claim, will be disallowed.[2] However, this result will have no effect on the Youngs' "deemed filed" claim. The court will hear the matter.

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1 See id. ["In light of this analysis of the 'deemed allowed' status of [the creditor's] claim as governed by the schedules, it is simply irrelevant that a protective proof of claim was filed on [the creditor's behalf . . . ."].

2 Because the claim will be disallowed in its entirety because it was filed late, the court has no need to reach the additional question raised by the debtors – whether the claim should be disallowed as a secured claim and allowed as an unsecured claim.

36. 12-37801-D-7 SALVADOR/JOANNE MARTINEZ — MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
TJW-6 — 7-9-14 [60]

37. 14-23011-D-7 CHRISTINE CRUZ — CONTINUED MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
UST-1 — 5-30-14 [16]

Tentative ruling:

This is the motion of the United States Trustee (the "UST") to dismiss this chapter 7 case pursuant to § 707(b)(1) of the Bankruptcy Code, based on the presumption of abuse, under § 707(b)(2), and based on the totality of the circumstances, under § 707(b)(3)(B). The debtor has filed opposition, and the UST has filed a reply. For the following reasons, the court will grant the motion and dismiss the case or, with the debtor's consent, convert the case to chapter 13.

The court finds that the debtor has not rebutted the presumption of abuse that arises in this case under § 707(b)(2)(A); thus, the case is subject to dismissal under § 707(b)(1).[1] The debtor's monthly disposable income ("MDI"), as shown on line 50 of her Form B22A, was $619.68. The UST made a number of adjustments, including some increases and some decreases in the debtor's various expenses, arriving at a figure of $678.72, which the debtor has accepted. Thus, the presumption of abuse arises. See § 707(b)(2)(A)(i). Among the figures the UST used, which the debtor has accepted, are $612 for transportation, which is equal to the IRS Local Standards amount, specific to San Francisco, for two vehicles,[2] and $583 for food and clothing, which is equal to the IRS National Standards amount for a household of one.

To rebut the presumption, the debtor asks the court to deduct from her MDI, based on special circumstances, (1) an additional $438 for transportation and (2) an additional $300 for food and clothing, leaving MDI of <$59.28>.[3] These increases would bring the debtor's total transportation expense to $1,050 per month and her total food and clothing expense to $883.[4] The special circumstances cited by the debtor are (1) the fact that she lives in Vallejo but works in San Francisco, necessitating a long commute and bridge tolls, and making her transportation costs higher than normal, (2) the fact that she works long hours and has a long commute, making her food costs higher than normal, and (3) the fact that she works in a professional position, requiring her to dress accordingly. The court notes also that the debtor lives and works in the San Francisco Bay Area, which has a higher than normal cost of living.

The Bankruptcy Code provides that "[t]he debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the

area in which the debtor resides, as in effect on the date of the order for relief, for the debtor" and the debtor's spouse and dependents. § 707(b)(2)(A)(ii)(I) (emphasis added). The Code, in the same subsection, also provides that "[i]n addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by" the IRS National Standards. Id. By contrast, the debtor asks the court to allow an extra 51% of the National Standards amount for her food and clothing expenses. She also asks the court to allow an increase of 71% for transportation expenses over and above the amount the UST has agreed should be allowed under the Local Standards specific to San Francisco (for two vehicles), whereas the statute contains no provision for the allowance of additional transportation expenses similar to the provision for an additional 5% for food and clothing. See id.[5]

The Code provides that the debtor's monthly expenses, for purposes of calculating MDI, shall be the applicable monthly expense amounts specified under the National and Local Standards, plus an additional 5% of the food and clothing allowance if reasonable and necessary. There is no indication in the Code that circumstances like a long work commute, a need to dress professionally for work, or living and working in a geographical area with a high cost of living justifies allowing increases to the amounts allowed by the National and Local Standards, and the debtor has cited no authority for that proposition, as would be necessary to the success of her argument.

The Code provides that in a § 707(b)(1) motion, "the presumption of abuse may only be rebutted by demonstrating special circumstances . . . to the extent such special circumstances [] justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." § 707(b)(2)(B). The Code gives as examples "a serious medical condition or a call or order to active duty in the Armed Forces." Id. Although those are only examples, the court has no basis on which to conclude that the circumstances of a debtor's employment – whether in a location that requires her to commute or in a position that requires her to dress professionally – constitute special circumstances akin to the examples provided by the Code. If that were the case, what the Code labels "special circumstances" could reasonably be extended to a large percentage of debtors, which would arguably gut the required use of the National and Local Standards. In short, the debtor has failed to demonstrate special circumstances that would justify deviating from those standards.

To conclude, although the court finds admirable the debtor's willingness to commute a significant distance and to work long hours, and although the debtor has not acted in bad faith in commencing or prosecuting this case, § 707(b)(2)(A)(ii) limits the amounts the debtor may deduct for transportation, food, and clothing to the amounts specified in the IRS Standards, with an additional 5% allowance for food and clothing if reasonable and necessary. Even with that extra 5% allowance, the debtor's MDI would be $620 ($678 - $58), more than enough to pay her unsecured creditors in full. (This is not to suggest that the debtor would necessarily be required to propose a 100% plan if she consented to conversion of this case to chapter 13. That is a matter that would be considered by the chapter 13 trustee and creditors initially, if the case is converted, and ultimately, if necessary, by the court.)

For the reasons stated, the court motion will be granted, if the debtor does not convert the case to Chapter 13. The court will hear the matter.

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1 The court need not and does not reach the issue of whether the totality of the circumstances of the debtor's financial situation demonstrates abuse under § 707(b)(3)(B).

2 The UST did not contest the debtor's deduction for two vehicles, despite the fact that she is the only person, and thus, the only driver in her household. The debtor had explained to the UST that she uses her older vehicle for her job-related driving and the newer one for evenings and weekends.

3 The debtor notes that she is not asking the court to deduct all her food and clothing. She claims she actually spends about $1,100 per month for food ($850) and clothing, laundry, and dry cleaning ($250), whereas she is asking the court to use the figure $883, an increase of $300 over the National Standards amount.

4 The parties refer to the debtor's food and clothing expenses; the IRS National Standards include in that category food, clothing, laundry and dry cleaning, housekeeping supplies, personal care, and miscellaneous.

5 The Code also allows for housing and utilities expenses in excess of the amount specified by the IRS Local Standards if the debtor's actual expenses for home energy costs are (1) documented, and (2) reasonable and necessary. § 707(b)(2)(A)(ii)(V). There is no similar provision for excess transportation expenses.

38.	14-25816-D-11	DEEPAL WANNAKUWATTE	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-7-14 [65]

This matter will not be called before 11:00 a.m.

39.	14-25820-D-11 FWP-1	INTERNATIONAL MANUFACTURING GROUP, INC.	MOTION TO USE CASH COLLATERAL, MOTION FOR ADEQUATE PROTECTION AND MOTION FOR REPLACEMENT LIENS NUNC PRO TUNC TO JUNE 24, 2014 7-2-14 [59]

This matter will not be called before 11:00 a.m.

40. 14-25820-D-11 FWP-2 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION TO EMPLOY KAREN RUSHING AS BOOKKEEPER
7-2-14 [54]

This matter will not be called before 11:00 a.m.

41. 14-25820-D-11 FWP-3 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION FOR ORDER ESTABLISHING NOTICE AND ADMINISTRATIVE PROCEDURES
7-2-14 [64]

This matter will not be called before 11:00 a.m.

42. 14-25820-D-11 FWP-6 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION TO APPROVE PAYMENT OF SECTION 503(B)(9) CLAIM TO MEDLINE INDUSTRIES INC.
7-9-14 [90]

This matter will not be called before 11:00 a.m.

43. 14-25820-D-11 FWP-7 — INTERNATIONAL MANUFACTURING GROUP, INC. — MOTION TO ABANDON
7-9-14 [97]

This matter will not be called before 11:00 a.m.

44. 14-26425-D-13 LAJ CONSTRUCTION, INC. ORDER TO SHOW CAUSE RE: SANCTIONS
7-3-14 [8]

The court will not permit telephonic appearances for this hearing.

45. 14-26937-D-7 MARK SWAGERTY MOTION FOR EXEMPTION FROM CREDIT COUNSELING
7-2-14 [6]

46. 14-25148-D-12 HENRY TOSTA MOTION TO CONVERT TO CHAPTER 11 CASE
MF-10
7-2-14 [113]

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

47. 14-25148-D-12 HENRY TOSTA MOTION TO CONSOLIDATE LEAD CASE 2014-25150 WITH 2014-25148
MF-9
6-27-14 [102]

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

48.	14-25150-D-12 MF-10	HENRY TOSTA, JR. FAMILY, L.P.	MOTION TO CONVERT TO CHAPTER 11 CASE 7-2-14 [112]

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

49.	14-25150-D-12 MF-9	HENRY TOSTA, JR. FAMILY, L.P.	MOTION TO CONSOLIDATE LEAD CASE 2014-25150 WITH 14-25148 6-27-14 [101]

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

50.	14-21759-D-7	WILLIAM NYLANDER	MOTION TO CONVERT CASE TO CHAPTER 13 7-3-14 [22]

Final ruling:

This is the motion of creditor Pauli Halstead to convert this chapter 7 case to a case under chapter 13 of the Bankruptcy Code. The debtor opposes the motion. The motion will be denied because a chapter 7 case may not be converted to a case under chapter 13 unless the debtor requests or consents to the conversion. 11 U.S.C. § 706(c). Here, the debtor's opposition makes clear that he does not request or consent to conversion, and the motion must be denied.[1]

The motion will be denied by minute order. No appearance is necessary.

_____

1 There are several procedural defects that constitute additional independent grounds for denying the motion. First, the moving party served only the debtor's attorney, and failed to serve the debtor himself, as required by Fed. R. Bankr. P. 9014(b) and 7004(b) (see also Fed. R. Bankr. P. 7004(g)). Second, the moving party failed to serve the trustee and all creditors, as required by Fed. R. Bankr. P. 2002(a)(4), and the United States Trustee, as required by Fed. R. Bankr. P. 9034(c). Third, the moving party gave only 16 days' notice of the hearing, rather than 21 days', as required by Fed. R. Bankr. P. 2002(a)(4).

51.	09-29162-D-11 SH-273	SK FOODS, L.P.	MOTION TO EMPLOY C AND W CONSULTANTS, INC. AS COMMERCIAL COLLECTIONS AGENCY 7-9-14 [4959]
52.	10-36676-D-7 GJH-4	SUNDANCE SELF-STORAGE-EL DORADO LP	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES LAW CORPORATION FOR GREGORY J. HUGHES, TRUSTEE'S ATTORNEY(S) 6-30-14 [562]
53.	14-26386-D-7	DAWN LOUGHMILLER	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-2-14 [12]
54.	13-28288-D-7 TMP-4	MICHAEL MATRACIA	MOTION BY TORY M. PANKOPF TO WITHDRAW AS ATTORNEY 7-8-14 [116]

	14-24788-D-11	CHRISTIAN/AMANDA BADER	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-6-14 [1]
55.	13-31489-D-7 ASM-1	DAVID/JANICE ARMENTROUT	MOTION TO COMPEL ABANDONMENT 7-7-14 [22]
56.	14-26196-D-7 DL-1	MICHAEL/DANA AGUILAR	CONTINUED MOTION TO COMPEL ABANDONMENT 6-20-14 [10]
57.	14-26899-D-7 MS-1	WILLIE BRYANT	MOTION TO AVOID LIEN OF FAIRLANE CREDIT L.L.C. 7-7-14 [11]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Fairlane Credit L.L.C. (the "creditor"), created by the issuance of an earnings withholding order to the debtor's employer. The motion will be denied for the following 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 to the attention of an "Officer, a Managing or General Agent, or Agent for Service of Process," at the address of the attorneys who obtained the creditor's earnings withholding order, whereas (1) there is no evidence the attorneys are authorized to receive service of process on behalf of the creditor in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b) (see Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004)); and (2) there is no evidence an officer, managing or general agent, or agent for service of process for the creditor is to be found at the address of the attorneys who obtained the order.

Second, the moving papers and supporting exhibits give conflicting information about the assets against which the debtor seeks to avoid the lien. The motion describes the assets as "Debtor's wages as am [sic] executed written of [sic] execution enforced by the Los Angeles County Sheriff and garnished by [the debtor's] employer CentiMark." Motion to Avoid Lien, filed July 7, 2014, at 1:27-2:1. Filed as an exhibit is a Notice of Bankruptcy Procedures dated July 5, 2014 from the Los Angeles County Sheriff's Department, which states that the Sheriff levied on the debtor's property pursuant to an earnings withholding order served November 12, 2013, and is holding $616.11.

By contrast, the debtor listed on his Schedule B, and claimed as exempt on his Schedule C, "Garnished Wages 2014 Year to Date" in the amount of $4,638.58. Thus, it is not clear whether the debtor is seeking to avoid the lien only as to the $616.11 held by the Sheriff's Department as of the petition date or whether he seeks to avoid the lien as to the $4,638.58 in wages garnished year-to-date in 2014, and thereby attempt to recover the funds garnished and received by the creditor which were no longer held by the debtor's employer or the Sheriff's Department as of the petition date. To the extent the debtor intends the latter, the court is aware of no authority for the proposition that a debtor may, pursuant to § 522(f) of the Code, avoid a lien on wages garnished and received by a judgment creditor prior to the filing of a bankruptcy case.

The debtor's memorandum of points and authorities adds to the confusion in that it refers to an exemption of $2,519.33 in a bank account, an amount that matches nothing the court can find in the debtor's schedules, and also refers to "debtor Willie Bryant and Lidiya Sushinskiy," whereas (1) the latter is not a debtor in this case and is not identified in the debtor's schedules or statements; and (2) the debtor has not shown that the creditor holds a lien on the funds in any of the debtor's bank accounts. The court concludes that these inconsistencies and those described above between the motion and supporting exhibits render the moving papers insufficiently clear to provide notice to the creditor of the nature of the relief requested, and insufficient to enable the court to determine whether to grant the motion.

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

59.	13-35671-D-11 UST-3	CARLYLE STATION LLC	CONTINUED MOTION FOR DETERMINATION OF THE REASONABLE VALUE OF THE SERVICES OF TORY M. PANKOPF, ESQ. 4-16-14 [129]

CASE DISMISSED 5/29/14
CASE CLOSED 6/16/14

Final ruling:

The hearing on this motion is continued to August 13, 2014 at 10:00 a.m. No appearance is necessary on July 23, 2014.

60. 13-35671-D-11 CARLYLE STATION LLC
TMP-5

CONTINUED MOTION TO DETERMINE REASONABLE VALUE FOR PRE-PETITION AND POST-PETITION FEES AND EXPENSES
5-13-14 [154]

CASE DISMISSED 5/29/14
CASE CLOSED 6/16/14

Final ruling:

The hearing on this motion is continued to August 13, 2014 at 10:00 a.m. No appearance is necessary on July 23, 2014.