

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 31, 2013 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.	12-34306-D-7 BLL-2	JACK/BARBARA MCKARSON	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DINWIDDIE-HINES CONSTRUCTION, INC. 7-3-13 [60]
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Final ruling:

This is the trustee's motion to approve a compromise with Dinwiddie-Hines Construction, Inc. ("DH Construction"), whereby DH Construction will pay the estate \$8,000 in exchange for a general release of claims. The motion is also characterized as a motion to sell the estate's claims to DH Construction; the notice of hearing invited interested persons to overbid the proposed compromise amount and purchase the claims. The problem is that the notice of hearing, which is the only document served on creditors, did not give any information about the nature of the estate's claims against DH Construction; that is, the notice did not give any information upon which an interested person might base a decision to appear at the hearing and enter an overbid. The notice of hearing also did not provide sufficient information to enable interested parties to determine whether to oppose the motion. Thus, the notice did not comply with LBR 9014-1(d) (4) ["When notice of a motion is served without the motion or supporting papers, the notice of hearing shall also

succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion."]. In the event the moving party files another motion, attention should also be paid to the proof of service, which does not sufficiently state the manner of service.

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

2. 13-24507-D-11 DKW PRECISION MACHINING CONTINUED MOTION FOR RELIEF
HRH-1 INC. FROM AUTOMATIC STAY
PNC EQUIPMENT FINANCE, LLC 6-13-13 [33]
VS.

3. 13-27212-D-7 CARLOS MENDOZA MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
5-28-13 [5]

4. 13-28913-D-12 ALLA YERMOLOVA STATUS CONFERENCE RE: VOLUNTARY
PETITION
7-2-13 [1]

5. 12-40315-D-11 OLUSEGUN/YVONNE LERAMO MOTION TO CONVERT CASE FROM
UST-1 CHAPTER 11 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
6-27-13 [57]

6. 13-23621-D-7 PACIFIC ASSET ORDER TO SHOW CAUSE
MANAGEMENT, INC. 6-20-13 [33]

CASE DISMISSED 4/18/13

Final ruling:

The hearing on this order to show cause is continued to October 2, 2013 at 10:00 a.m. No appearance is necessary on July 31, 2013.

7. 10-47422-D-7 DENNIS/SHERYL LANCASTER MOTION TO CONSOLIDATE WITH
12-2118 HSM-2 12-02268 TRACY'S CALIFORNIA
FARRAR V. LEXINGTON BLAST, LLC
CONSULTING, INC. ET AL 6-28-13 [48]

8. 10-47422-D-7 DENNIS/SHERYL LANCASTER MOTION TO CONSOLIDATE WITH
12-2268 HSM-1 12-02118 LEXINGTON CONSULTING,
FARRAR V. TRACY'S CALIFORNIA INC.
BLAST, LLC ET AL 6-28-13 [29]

9. 10-47422-D-7 DENNIS/SHERYL LANCASTER MOTION FOR ENTRY OF DEFAULT
13-2028 JUDGMENT
FARRAR V. CORSARO 6-17-13 [20]

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 entry of default judgment is supported by the record made by the moving party. As such the court will grant the motion for entry of default judgment by minute order. Moving party is to submit an appropriate form of judgment. No appearance is necessary.

10. 13-27132-D-7 VANESSA CAMPOS MOTION TO VACATE DISMISSAL OF
CASE
6-13-13 [16]

CASE DISMISSED 6/10/13

11. 10-42050-D-7 VINCENT/MALANIE SINGH - MOTION TO LIMIT NOTICE
CDH-10 BARRED - 06/29/11 7-3-13 [414]

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 limit notice is supported by the record. As such the court will grant the motion to limit notice. Moving party is to submit an appropriate order. No appearance is necessary.

12. 10-42050-D-7 VINCENT/MALANIE SINGH - MOTION TO COMPROMISE
CDH-9 BARRED - 06/29/11 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JASON SNODGRASS,
RABISANKAR KULSHI, ARINDAM
KULSHI
7-3-13 [410]

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.

13. 10-42050-D-7 VINCENT/MALANIE SINGH - MOTION FOR SUMMARY JUDGMENT
12-2489 BARRED - 06/29/11 KMP-1 7-1-13 [45]
BURKART V. XIE

This matter will be called with the 10:30 a.m. calendar.

Tentative ruling:

This is the motion of defendant Baio Xie for summary judgment or, in the alternative, for summary adjudication of certain facts. The moving party's proofs of service do not evidence service in accordance with applicable rules. The proofs of service are on a form that states at the bottom that it has been approved for use by the Bankruptcy Court for the Central District of California. With respect to the manner of service, the proofs of service state:

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):
Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 07/01/2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below: [listing names and e-mails addresses of the plaintiff, his counsel, the United States Trustee, and the defendant's counsel].

This method of service is not permitted by applicable rules. Pursuant to Fed. R. Civ. P. 5(b)(3), a party may use the court's transmission facilities to make electronic service, if a local rule so authorizes. Instead, this court's local rules provide that service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) (incorporated herein by Fed. R. Bankr. P. 7005) "shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served." LBR 7005-1(d)(1). The rule specifies certain matters that must be included in the email. See id. In other words, if electronic service is to be used, the moving party must actually serve the other parties by electronic mail; the moving party may not rely on service by the court's CM/ECF system. As indicated above, the moving party did not technically comply with this rule, and the moving party did not accomplish service in any other manner. The court notes that the plaintiff has filed opposition to this motion; however, the plaintiff expressly has not waived this defect in service.

In addition, the moving party's proofs of service are attached to the documents that were served, rather than being filed separately, as required by LBR 9014-1(e)(3) and the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901, Guideline 7(a) and (b), as required by LBR 9004-1(a).

In his opposition to the motion the plaintiff asserts that the motion is premature pursuant to Fed. R. Civ. P. 56(b). The trustee asserts that he cannot present certain facts essential to defending the motion until further discovery is conducted. The moving party has filed a reply to the trustee's opposition acknowledging that the service was not technically proper, but indicating the plaintiff has received the moving papers and as such the technical non-compliance is not material. Further, the moving party asserts that the motion is not premature in

that the plaintiff has had ample time to investigate the case and compile the necessary evidence for responding to the motion for summary judgment.

The court intends to use this hearing as a scheduling/status conference. The court is inclined to allow the plaintiff a limited amount of time to conduct further discovery in this case to enable him to adequately respond to this motion.

14. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION FOR
DB-25 DOWNEY BRAND, LLP, SPECIAL
COUNSEL(S), FEES: \$42,286.00,
EXPENSES: \$231.12
7-1-13 [4353]

Tentative ruling:

This is the twelfth interim application for approval of fees and reimbursement of expenses filed by Downey Brand, LLP for services rendered to the creditors' committee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

15. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION FOR
SH-215 GREGORY C. NUTI, TRUSTEE'S
ATTORNEY(S), FEES:
\$1,266,329.00, EXPENSES:
\$67,183.38
6-28-13 [4319]

Tentative ruling:

This is the twelfth interim application for approval of fees and reimbursement of expenses filed by Schnader Harrison Segal & Lewis, LLP for services rendered to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

16. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION FOR
SH-216 BRADLEY D. SHARP, CHAPTER 11
TRUSTEE(S), FEES: \$166,279.00,
EXPENSES: \$16,196.69
7-1-13 [4357]

Final ruling:

The hearing on this motion is continued to August 7, 2013 at 10:00 a.m. per the amended notice of hearing. No appearance is necessary on July 31, 2013.

17. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION FOR
SH-217 DUNCAN COTTERILL, SPECIAL
COUNSEL(S), FEES: \$26,701.00,
EXPENSES: \$0.00
6-28-13 [4325]

18. 09-29162-D-11 SK FOODS, L.P. MOTION FOR COMPENSATION FOR
SH-218 NORTON ROSE, SPECIAL
COUNSEL(S), FEES: \$379,438.98,
EXPENSES: \$0.00
6-28-13 [4329]

Tentative ruling:

This is the third interim application for approval of fees and reimbursement of expenses filed by Schnader Harrison Segal & Lewis, LLP as solicitors to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

19. 09-29162-D-11 SK FOODS, L.P.
SH-219

MOTION FOR COMPENSATION FOR
NORTON ROSE, SPECIAL
COUNSEL(S), FEES: \$56,737.93,
EXPENSES: \$0.00
6-28-13 [4336]

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Norton Rose, solicitors, on behalf of Daryl Williams, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

20. 09-29162-D-11 SK FOODS, L.P.
SH-220

MOTION FOR COMPENSATION FOR
NORTON ROSE, SPECIAL
COUNSEL(S), FEES: \$10,640.00,
EXPENSES: \$0.00
6-28-13 [4340]

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Norton Rose, solicitors, on behalf of Fabian Gleeson, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

21. 09-29162-D-11 SK FOODS, L.P.
SH-221

MOTION FOR COMPENSATION FOR
NORTON ROSE, SPECIAL
COUNSEL(S), FEES: \$39,623.10,
EXPENSES: \$0.00
6-28-13 [4344]

Tentative ruling:

This is the second interim application for approval of fees and reimbursement of expenses filed by Norton Rose, solicitors, on behalf of Doran Cook, barrister to the Chapter 11 trustee. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

22. 09-29162-D-11 SK FOODS, L.P.
SH-222

MOTION FOR COMPENSATION FOR
EICHSTAEDT AND LERVOLD, LLP,
ACCOUNTANT(S), FEES: \$3,932.50,
EXPENSES: \$0.00
6-28-13 [4348]

Tentative ruling:

This is the eighth interim application for approval of fees and reimbursement of expenses filed by Eichstaedt & Lervold, LLP. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for final award of compensation. Accordingly, at this time the court will approve an interim award at the percentage that prior fee applications were allowed. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

23. 11-49564-D-7 SALVADOR/NORMA RIOS MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
U.S. BANK, N.A. VS. 7-1-13 [38]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on March 26, 2013 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.

24. 11-26466-D-13 STEVE JOHNSON ORDER TO SHOW CAUSE
6-20-13 [42]

**CASE DISMISSED 5/3/11 AND
CLOSED 9/13/11**

Final ruling:

The hearing on this order to show cause is continued to October 2, 2013 at 10:00 a.m. No appearance is necessary July 31, 2013.

25. 13-28266-D-7 EDWINETTE SPENCER MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
6-19-13 [5]

26. 13-23371-D-11 JUAN/MARGARITA RAMIREZ CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-13-13 [1]

27. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
JSD-1 AUTOMATIC STAY
OSBORNE DEVELOPMENT 6-28-13 [935]
CORPORATION VS.

Final ruling:

This matter is resolved without oral argument. This is Osborne Development Corporation'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.

28. 12-30686-D-7 WEST COAST REAL ESTATE & MOTION FOR COMPENSATION FOR
BHS-2 MORTGAGE INC. BARRY H. SPITZER, TRUSTEE'S
ATTORNEY(S), FEES: \$4,760.90,
EXPENSES: \$415.90
6-26-13 [201]

Final ruling:

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

29. 12-40188-D-7 JOHN/ROSARIO KENERY MOTION FOR ENTRY OF DEFAULT
13-2072 DNL-1 JUDGMENT
DIDRIKSEN V. KENERY 5-30-13 [14]

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 entry of default judgment is supported by the record made by the moving party. As such the court will grant the motion for entry of default judgment by minute order. Moving party is to submit an appropriate form of judgment. No appearance is necessary.

30. 12-40590-D-7 ANIL/RANJANI PRASAD MOTION TO COMPEL ABANDONMENT
FF-1 6-7-13 [53]

Final ruling:

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

31. 13-25791-D-7 SAMUEL THOMPSON MOTION FOR RELIEF FROM
JAVA DETOUR NORCAL, LLC VS. AUTOMATIC STAY
7-2-13 [41]

Final ruling:

As a result of the procedural defects described herein, the motion will be denied. Moving party filed a single document combining the notice of motion and the motion, failing to comply with Local Rule 9014-1(d)(2). Also, although moving party included a docket control number on the supporting papers, there was no indication of an appropriate docket control number on the motion/notice document. See Local Rule 9014-1(c)(1). As a result of these procedural defects the court will deny the motion by minute order. No appearance is necessary.

32. 13-21595-D-7 PATRICIA CUNNINGHAM CONTINUED MOTION FOR
JT-5 SUBSTITUTION OF DECEASED PARTY
6-18-13 [46]

Tentative ruling:

This is a motion to substitute the debtor's daughter, Amy Sparks ("Sparks"), for the debtor, who died in March of this year, about a month after her petition commencing this case was filed. The trustee opposes the motion; Sparks has filed a reply. For the following reasons, the motion will be granted, conditioned on the submission of additional evidence.

The trustee's first argument - that the motion was brought by the debtor's attorney, who had no standing to bring it - is rejected. True, the motion was signed by the debtor's attorney; the first sentence of the motion - on its face - is illogical because it states that the debtor, by and through her attorney, brings the motion. However, the prayer of the motion states that "Amy Sparks, as successor and representative of Patricia E. Cunningham, by and through counsel," requests that she be substituted as the party in this case in lieu of the original party, Patricia Cunningham. In other words, it is clear the moving party is Sparks.

Next, the trustee contends the motion is premature. According to the trustee, "[i]f a contested matter arises in which a response from the Debtor's personal representative is required, then, and only then, would it be appropriate to

substitute in a personal representative." Trustee's Opposition, filed July 12, 2013, at 2:18-20. There is some irony in this argument, in that the trustee had, before this motion was filed, filed three motions of his own in this case, at least two of which could be considered contested matters. Both of those were still pending when the present motion was filed, and the debtor's attorney actually contested one of them. Thus, the trustee would, apparently, force a deceased debtor's personal representative or successor in interest to wait until each contested matter or adversary proceeding is commenced, and then move to substitute into each one individually, a procedure that would obviously be unworkable.

The trustee's theory is that the case on which Sparks relies, Hawkins v. Eads, 135 B.R. 380 (Bankr. E.D. Cal. 1991), involved a substitution of parties in an adversary proceeding, not a parent bankruptcy case. However, nothing in Eads suggests that a substitution of a decedent's personal representative or successor in interest may not also be made in a parent case. The trustee also cites this language from Eads: "when . . . a chapter 7 debtor dies, no procedural measures are necessary in the bankruptcy case itself." 135 B.R. at 383.

That statement is taken out of context. The full quotation is this:

When, as here, a chapter 7 debtor dies, no procedural measures are necessary in the bankruptcy case itself. When a debtor in a case under a different chapter dies, the court has a determination to make and parties in interest have an obligation to bring the question before the court.

Eads, 135 B.R. at 383. In making this statement, the court was simply distinguishing between the effect of a debtor's death in a chapter 7 case as contrasted with a chapter 11, 12, or 13 case. Whereas a chapter 7 case is not dismissed upon the debtor's death, a chapter 11, 12, or 13 case may be dismissed unless further administration is possible and is in the best interest of the parties. See Fed. R. Bankr. P. 1016.1 The court's statement quoted by the trustee in no way suggests that the debtor's personal representative or successor in interest may not bring a substitution motion until an adversary proceeding or contested matter has been commenced.

The trustee's position is also based on the fact that the rule governing substitution of parties on the death of a party, Fed. R. Civ. P. 25(a), is incorporated into the bankruptcy rules in the 7000 series (Fed. R. Bankr. P. 7025), and thus, applies only in adversary proceedings (Fed. R. Bankr. P. 7001), contested matters (Fed. R. Bankr. P. 9014(c)), and proceedings contesting an involuntary petition or chapter 15 petition for recognition and proceedings to vacate an order for relief (Fed. R. Bankr. P. 1018). Thus, Fed. R. Civ. P. 25(a) is not incorporated into parent bankruptcy cases.

Absent some other procedural mechanism, this would leave a chapter 7 case in limbo where, for example, the debtor dies before the meeting of creditors or, as in this case, the trustee (according to Sparks) has threatened a contempt motion if the keys to the debtor's residence are not surrendered to him. Leaving the deceased debtor without a representative (and the debtor's attorney without a client) in these circumstances would seem to contravene the intention that the estate be administered and the case concluded "in the same manner, so far as possible, as though the death . . . had not occurred." Fed. R. Bankr. P. 1016. Thus, in In re Lucio, 251 B.R. 705, 710 (Bankr. E.D. Tex. 2000), the court held that the chapter 7 case before it "can proceed under the direction of the personal representative of the deceased debtor's probate estate [and that] the personal representative can

appear on behalf of the deceased debtor at the section 341 meeting.”²

In the present case, the court finds no reason not to permit Sparks, assuming she is properly qualified under California law to do so, to act in this case as either the debtor’s personal representative (if there is a probate proceeding) or successor in interest (if there is not), and no reason, as the trustee suggests, to force Sparks to reapply in connection with each individual contested matter or adversary proceeding. The remaining question is whether Sparks is the debtor’s personal representative or successor in interest (or neither). The motion was originally supported only by Sparks’ declaration that she is “the lawful successor and representative of [her] mother,” the debtor. Declaration of Amy Sparks, filed June 18, 2013, at 1:23. The declaration did not indicate whether a probate proceeding had been or would be opened, or whether the decedent’s estate would be administered in some other manner. Sparks has now filed a copy of a document entitled “The W. E. Cunningham and Patricia E. Cunningham Revocable Trust,” which contains an amendment dated February 6, 2013 under which Sparks was named to be the successor trustee upon the debtor’s death. The trust agreement does appear, as Sparks contends, to authorize her, as successor trustee, to administer the trust estate.

However, the trust agreement is not authenticated; thus, it is inadmissible. Further, Sparks’ declaration is insufficient under state law to demonstrate that she is the debtor’s personal representative or successor in interest. If she is the personal representative of the decedent’s estate, she will have been issued letters by the state court. “A person has no power to administer the estate until the person is appointed personal representative and the appointment becomes effective. Appointment of a personal representative becomes effective when the person appointed is issued letters.” Cal. Prob. C. § 8400(a). If there is no probate proceeding, Sparks must be able to provide an affidavit or sworn declaration sufficient under California law to demonstrate her status as the debtor’s successor in interest. See Cal. Code Civ. Proc. § 377.32. The court intends to grant the motion conditioned on Sparks submitting evidence sufficient to allow the court to conclude that she is either the debtor’s personal representative or successor in interest.

The court will hear the matter.

¹ Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer’s debt adjustment, or individual’s debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016.

² See also In re Vetter, 2012 Bankr. LEXIS 2017, *5 (Bankr. D.S.C. 2012) [“upon the death of a debtor, counsel for a deceased debtor should ordinarily promptly notify the Court of the debtor’s death and file a motion for designation of an appropriate person to act on the debtor’s behalf.”].

33. 13-22916-D-7 SUSAN GAMINO MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
7-5-13 [35]

34. 13-24173-D-7 STEPHEN LUEDERS MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 7-16-13 [14]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f) (2). However, the debtor received his discharge on July 15, 2013 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 finds a hearing is not necessary as to the trustee because the trustee has filed a Report of No Assets and a statement of non-opposition. As a result, the court will grant relief from stay as to the trustee and the estate by minute order. There will be no further relief afforded. No appearance is necessary.

13-28475-D-7 ROBERT WHITE MOTION FOR RELIEF FROM
JAB-1 AUTOMATIC STAY
CALIFORNIA HOUSING FINANCE 7-11-13 [14]
AGENCY VS.

Final ruling:

This case was dismissed on July 15, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

35. 13-27498-D-7 MICHAEL BOYLE AND ISABEL MOTION TO DISMISS CASE
RTD-1 MORIN-BOYLE 7-15-13 [21]

Final ruling:

This is the motion of Schools Financial Credit Union to dismiss this chapter 7 case. The motion will be denied for the following reasons: (1) the moving party failed to give at least 21 days' notice of the hearing, as required by Fed. R. Bankr. P. 2002(a) (4); and (2) the moving party served only the debtors, the debtors' attorney, the chapter 7 trustee, the U.S. Trustee, and the parties requesting special notice in this case, and failed to serve any of the numerous other creditors listed on the debtors' schedules, as required by the same rule.

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

37. 10-42420-D-7 CROWN ENGINEERING AND CONTINUED MOTION FOR
JRR-2 CONSTRUCTION, INC. COMPENSATION FOR GONZALES AND
SISTO, LLP, ACCOUNTANT(S), FEE:
\$2,232.00, EXPENSES: \$7.45
6-25-13 [63]

Final ruling:

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

38. 13-27581-D-7 ANATOLIY/SVETLANA LUTSIK CONTINUED MOTION FOR WAIVER OF
THE CHAPTER 7 FILING FEE OR
OTHER FEE
6-1-13 [5]

39. 11-23193-D-7 JINTANA SHAW CONTINUED MOTION TO SUBSTITUTE
ATTORNEY, TO RECONVERT CASE
FROM CHAPTER 7 TO CHAPTER 11 OR
TO DISMISS CASE
6-10-13 [292]