

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

September 4, 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.	13-28407-D-7	NICHOLAS/ANGELA MORROW	MOTION FOR RELIEF FROM
	RCO-1		AUTOMATIC STAY
	BANK OF AMERICA, N.A. VS.		7-31-13 [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 is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

2.	13-29711-D-7	JANET HOLUB	MOTION TO COMPEL ABANDONMENT
	BKB-1		8-2-13 [10]

Final ruling:

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

3. 10-42420-D-7 CROWN ENGINEERING AND MOTION FOR RELIEF FROM
PTS-1 CONSTRUCTION, INC. AUTOMATIC STAY
PETROCHEM INSULATION, INC. 7-26-13 [76]
VS.

Final ruling:

This matter is resolved without oral argument. This is Petrochem Insulation, Inc.'s motion seeking 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 cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to establish the debt, and amount thereof. 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 establishing its claim. There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

4. 13-21824-D-7 CALVIN/KATHLEEN DOUGLAS MOTION FOR ORDER RESTRICTING
UST-2 USE OF ELECTRONIC SIGNATURES
8-6-13 [41]

5. 13-27024-D-7 JUAN GOMEZ MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
TD AUTO FINANCE, LLC VS. 8-5-13 [16]

Final ruling:

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

6. 13-27324-D-7 LOYD/SHARON BIRD MOTION TO AVOID LIEN OF
CLR-1 CALIFORNIA SERVICE BUREAU
INCORPORATED
8-2-13 [12]

Final ruling:

This is the debtors' motion to avoid judicial liens held by California Service Bureau, Inc. and Grant & Weber. The motion will be denied because the moving

parties failed to serve either lienholder in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b).

The moving parties served Grant & Weber, which is a corporation, at a post office box address with no attention lien, whereas the rule requires that a corporation be served to the attention of an officer, managing or general agent, or agent for service of process. The moving parties served California Service Bureau, Inc. only through the attorney who obtained its judgment, with no evidence the attorney is authorized to accept service of process for California Service Bureau, Inc., in bankruptcy adversary proceedings and contested matters under Rule 7004(b)(3). Further, service was attempted on that attorney only by his name in Sacramento, California, with no street or post office box address.

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

7. 13-29525-D-7 ANGELA BATES MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
7-19-13 [5]

CONTINUED TO 9-18-13 AT 10:00 A.M.
PER REQUEST OF DEBTOR

8. 13-25729-D-7 OSCAR/KATHLEEN MARTINEZ MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 8-5-13 [18]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on August 7, 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.

9. 13-27037-D-7 JACQUELINE HENDERSON MOTION TO COMPEL ABANDONMENT
DSH-1 8-1-13 [27]

Final ruling:

This is the debtor's motion to compel abandonment of a 2005 Chevrolet Malibu. The moving party served only the chapter 7 trustee, the United States Trustee, and the creditor holding a claim secured by the vehicle. The motion will be denied because the moving party failed to serve the motion in accordance with Fed. R. Bankr. P. 6007.

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

The court will continue the hearing to October 2, 2013, at 10:00 a.m. The moving party shall file a notice of continued hearing and serve it on all creditors no later than September 18, 2013. The moving party shall file a proof of service no later than September 20, 2013. The notice of continued hearing shall be pursuant to LBR 9014-1(f) (1) or (f) (2), at the moving party's election, depending on whether 14 days' or 28 days' notice is given. The notice of continued hearing shall describe the nature of the relief requested and set forth the essential facts necessary for a party to determine whether to oppose the motion, as required by LBR 9014-1(d) (4).

The motion will be continued by minute order. No appearance is necessary on September 4, 2013.

10. 13-27037-D-7 JACQUELINE HENDERSON MOTION TO REDEEM
DSH-2 8-1-13 [31]

Final ruling:

This is the debtor's motion to redeem a 2005 Chevrolet Malibu from a lien held by Santander for a one-time payment of \$2,412. The motion will be denied because the moving party failed to serve Santander in strict compliance with Fed. R. Bankr. P. 7004(b) (3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Santander Consumer USA Inc. (1) by first-class mail at a post office box address with no attention line; and (2) by certified mail to its agent for service of process, as registered with the California Secretary of State. The first method was insufficient because the rule requires that a corporation be served to the attention of an officer, managing or general agent, or agent for service of process, whereas here there was no attention line. The second method was insufficient because a corporation that is not an FDIC-insured institution must be served by first-class mail, not certified mail.

This distinction is important. Rule 7004(h), which governs service on an FDIC-insured institution, requires service by certified mail, whereas service on a corporation, partnership, or other unincorporated association must be by first-class mail. See preamble to Rule 7004(b). If service on a corporation, partnership, or other unincorporated association by certified mail were appropriate, the distinction in the manner of service, as between Rule 7004(h) and Rule 7004(b) (3), would be superfluous.

The motion will be denied for the additional independent reason that § 722 of the Bankruptcy Code allows a debtor to redeem certain types of personal property

from a lien securing a dischargeable consumer debt if the property is exempted or has been abandoned, whereas neither of those conditions applies here. The debtor's motion to compel abandonment of the vehicle the debtor seeks to redeem is also on this calendar, and will not be granted at this time. The debtor listed the vehicle on her schedules of exemptions; however, she listed the value of the claimed exemption as \$0, which is the equivalent of not exempting the vehicle at all.

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

11. 13-23956-D-7 BAUDELIO/MARIANA VALDEZ MOTION TO COMPEL ABANDONMENT
PGM-2 8-1-13 [36]

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.

12. 13-25757-D-7 CARLOS MUNOZ OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
6-20-13 [13]

Final ruling:

This is the debtor's opposition to the trustee's motion to dismiss this case for failure to appear at the meeting of creditors. On August 15, 2013, the trustee withdrew his motion to dismiss on the basis that it was filed in error. As a result of the trustee's withdrawal of his motion to dismiss, the debtor's opposition is moot. The opposition will be overruled as moot by minute order. No appearance is necessary.

13. 09-29162-D-11 SK FOODS, L.P. MOTION TO EMPLOY PETER
SH-226 COLLINSON AS SPECIAL COUNSEL
8-9-13 [4421]

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

14. 09-29162-D-11 SK FOODS, L.P. CONTINUED MOTION FOR SUMMARY
12-2635 BMJ-1 JUDGMENT
JACKSON V. OLAM WEST COAST, 3-27-13 [80]
INC. ET AL

Final ruling:

The parties have resolved this adversary proceeding by stipulation. This motion will be denied as moot by minute order. No appearance is necessary.

15. 09-29162-D-11 SK FOODS, L.P. CONTINUED COUNTER MOTION FOR
12-2635 BMJ-1 PARTIAL SUMMARY JUDGMENT
JACKSON V. OLAM WEST COAST, 4-10-13 [103]
INC. ET AL

Final ruling:

The parties have resolved this adversary proceeding by stipulation. This motion will be denied as moot by minute order. No appearance is necessary.

16. 09-29162-D-11 SK FOODS, L.P. CONTINUED COUNTER MOTION FOR
12-2635 SH-2 PARTIAL SUMMARY JUDGMENT
JACKSON V. OLAM WEST COAST, 4-10-13 [96]
INC. ET AL

Final ruling:

The parties have resolved this adversary proceeding by stipulation. This motion will be denied as moot by minute order. No appearance is necessary.

17. 09-29162-D-11 SK FOODS, L.P. CONTINUED MOTION FOR SUMMARY
12-2635 SH-2 JUDGMENT
JACKSON V. OLAM WEST COAST, 3-27-13 [71]
INC. ET AL

Final ruling:

The parties have resolved this adversary proceeding by stipulation. This motion will be denied as moot by minute order. No appearance is necessary.

18. 13-25869-D-7 NISHELLE FEWELL

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
8-7-13 [28]

19. 12-42182-D-7 NOEL VARGAS
13-2102 SNM-1
ANDREWS V. VARGAS

MOTION TO DISMISS ADVERSARY
AND/OR MOTION FOR SANCTIONS
AGAINST DEBTOR'S ATTORNEY FOR
MISCONDUCT UNDER FRBP 9011
7-24-13 [21]

Tentative ruling:

This is the motion of the defendant, who is the debtor in the chapter 7 case in which this adversary proceeding was filed (the "debtor"), to dismiss this adversary proceeding under Fed. R. Civ. P. 12(h)(3), incorporated herein by Fed. R. Bankr. P. 7012(b), for lack of subject matter jurisdiction. The debtor also seeks an award of attorney's fees of \$1,200 and sanctions under Fed. R. Bankr. P. 9011 against the plaintiff and her attorney of \$2,000 each. The plaintiff has filed opposition. For the following reasons, the motion will be denied.

The plaintiff's complaint in this proceeding¹ is straightforward. The plaintiff, the debtor's former spouse, seeks a determination that certain debts alleged to be owed her by the debtor, are nondischargeable in bankruptcy pursuant to § 523(a)(5) or § 523(a)(15) of the Bankruptcy Code. Attached to the Complaint is a copy of a judgment filed June 7, 2013 in Andrews v. Vargas, Solano County Superior Court Case No. FFL117510 (the "State Court Action"), by which the parties' marriage was dissolved (the "Judgment"). The Judgment dissolved the marriage effective June 7, 2013, and included orders regarding child custody, child support, spousal support, a marital property division, and attorney's fees, all in accordance with the parties' Marital Settlement Agreement (the "Agreement"), which was incorporated into the Judgment. Also attached to the Complaint is a copy of the Findings and Order After Hearing, filed February 4, 2011 in the State Court Action (the "Findings").²

The Complaint itemizes the various obligations ordered under the Judgment to be paid by the debtor to the plaintiff, including child support arrears, spousal support, health care and counseling costs for the parties' minor children, child care costs, and so on. The Complaint ends with the conclusions that (1) "[a]ll of these obligations were intended by the parties, or by the state court, to be in the nature of alimony, maintenance or support and in fact were necessary to the support of the plaintiff and her children and serve that purpose" (Complaint at 5:1-3), and therefore, all are nondischargeable under § 523(a)(5); or in the alternative, (2) all of these obligations were incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree, or other state court order, and thus, are nondischargeable under § 523(a)(15). The complaint seeks a judgment declaring that these obligations "are not dischargeable in this

bankruptcy case or any other bankruptcy case filed by the debtor." Id. at 5:15-16.

The debtor's argument derives from the following statement in the Complaint:

The divorce judgment ordered [the debtor] to pay the following: A. Child support arrears owed from [the debtor] to [the plaintiff] . . . totaling approximately twenty-five thousand dollars (\$25,000), payable by the 15th day of each month in the amount of \$150. This order is a base child support order established in or around 1999. In 2004, the parties stipulated to stay future interest on the arrears, with the agreement [the debtor] would pay \$150 each and every month until the arrears are paid in full.

Complaint, at 2:19-28.

The debtor's argument is this: "There is no evidence of this debt of 'approximately \$25,000' on EXHIBIT B or elsewhere. This reckless and false statement caused Defendant mental anguish. Defendant is a social worker. He is especially concerned about his reputation at work and in the community for meeting family obligations. This Complaint caused Defendant anguish and stress."³ The debtor states as much in his supporting declaration, adding that he does not owe \$25,000 in child support arrears, that the parties resolved the issue of child support arrears in 2006 by stipulation and order pursuant to which the debtor has paid the plaintiff \$150 per month, and that by the debtor's calculation, "my remaining balance of arrears is \$6,179.57."⁴ The debtor's argument fails because he has provided no authority for the proposition that anguish and stress caused by the allegations of a complaint constitute grounds for dismissal of the complaint, and the court is aware of none.

The debtor also casts his argument in terms of lack of standing⁵ and lack of a legal purpose.⁶ He is wrong on both counts. "[A]ny creditor may file a complaint to obtain a determination of the dischargeability of any debt." Fed. R. Bankr. P. 4007(a). By way of reference to the Judgment, the complaint unequivocally asserts that the plaintiff is a creditor of the debtor. (The court notes that the debtor did not list the plaintiff as a creditor on any of his bankruptcy schedules, which may well have generated concern on the plaintiff's part as to the debtor's views on the dischargeability of the debts imposed by the Judgment.) The court has no reason to doubt that the plaintiff brought the action for the legitimate legal purpose of obtaining a declaration that the debts referred to in the Judgment are nondischargeable under § 523(a)(5) and/or § 523(a)(15), which are issues over which this court has jurisdiction pursuant to 28 U.S.C. § 1334(b).

For the reasons stated, the motion will be denied. The debtor's request for an award of attorney's fees will be denied for lack of factual basis and legal authority. The debtor's request for an award of sanctions under Fed. R. Bankr. P. 9011 will be denied for failure to demonstrate that the rule has been violated and for failure to follow the "safe harbor" provisions of Rule 9011(c)(1)(A). The plaintiff's request in her opposition for an award of legal fees and costs will be denied for lack of legal authority. The plaintiff's request that the denial of the debtor's motion be with prejudice will be denied.

The court will hear the matter.

¹ Second Amended Complaint Seeking Determination That Debt is Non-Dischargeable Because It Is a Domestic Support Obligation or, in the Alternative, Because It Is a

Non-Dischargeable Property Settlement, 11 U.S.C. § 523(a)(5) and (a)(15), filed June 27, 2013 (the "Complaint").

2 The motion states, "The Complaint pretends these [the Judgment and Findings] are set forth in EXHIBIT B, but the docket shows no such exhibit." The exhibits are not separately listed on the court's docket, but they are attached to the Complaint. (The exhibits were not filed with the plaintiff's original complaint; they were added when she filed her second amended complaint.)

3 Motion to Dismiss Under Rule 12(h)(3) and FRBP 7012(b), and for Sanctions Under Rule 9011, filed July 24, 2013 (the "Motion"), at 2:13-19.

4 Declaration in Support of Motion to Dismiss Under Rule 12(h)(3) and FRBP 7012(b), and for Sanctions Under Rule 9011, filed July 24, 2013, at 2:26-27.

5 "Plaintiff lacks standing to bring a claim because the Court cannot grant relief. Indeed, Plaintiff cites no code section or rule in [her] prayer for relief. Federal courts have no power to decide questions that cannot affect the rights of litigants in the case before them." Motion at 3:26-4:4 (citations omitted).

6 "This is a Complaint by a former spouse incident to an acrimonious divorce. There is no legal purpose for this Complaint. It was filed to humiliate Defendant with the false statement he owes 'approximately \$25,000' in child support arrears, and otherwise cause him anguish." Motion at 4:6-10.

20. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
BFZ-2 AUTOMATIC STAY AND/OR MOTION
FIESTA DEVELOPMENT, INC. VS. FOR ADEQUATE PROTECTION
8-2-13 [961]

Final ruling:

This matter is resolved without oral argument. This is Fiesta Development, 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.

21. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
JCT-3 AUTOMATIC STAY
MERITAGE HOMES OF CALIFORNIA, INC. VS. 7-30-13 [953]

Final ruling:

This matter is resolved without oral argument. This is Meritage Homes of California, 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.

22. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
WSH-8 AUTOMATIC STAY
RYLAND HOMES OF CALIFORNIA, 8-7-13 [970]
INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Ryland Homes of California, 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.

23. 13-25791-D-7 SAMUEL THOMPSON OBJECTION TO CHAPTER 7
TRUSTEE'S REPORT OF NO
DISTRIBUTION FILED BY JEZZY
PAYNE AND AMBER MCCONNELL
7-16-13 [48]

24. 12-27192-D-7 JACKIE SEAMONS MOTION FOR COMPENSATION BY THE
SLF-7 LAW OFFICE OF THE SUNTAG LAW
FIRM FOR DANA A. SUNTAG,
TRUSTEE'S ATTORNEY(S), FEES:
\$3,000.00, EXPENSES: \$493.41
8-5-13 [43]

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. Moving party is to submit an appropriate order. No appearance is necessary.

25. 12-34793-D-7 UNITED PROFESSIONAL REAL MOTION FOR COMPENSATION FOR
DMW-4 ESTATE INSPECTORS, INC. GABRIELSON & COMPANY,
ACCOUNTANT(S), FEES: \$2,242.50,
EXPENSES: \$118.45
7-31-13 [51]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual,

necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion and the moving party is to submit an appropriate order. No appearance is necessary.

26. 11-31394-D-7 PATTI GRANGER
13-2083
ABDALLAH V. GRANGER

MOTION FOR SUMMARY JUDGMENT
8-7-13 [27]

Final ruling:

This is the defendant's motion for summary judgment. The plaintiff has filed opposition. Regardless of the filing of the opposition, however, the motion will be denied for the following reasons: (1) the moving papers do not include a docket control number, as required by LBR 9014-1(c); (2) the notice of motion and motion are filed as a single document rather than separately, as required by LBR 9014-1(d)(2) and the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901, section 3(a), as required by LBR 9004-1; (3) the notice of motion does not advise potential respondents whether and when written opposition must be filed, as required by LBR 9014-1(d)(3), and if it was intended that written opposition be required, the notice does not include the cautionary language required by that rule; and (4) the supporting declaration of Larry Lionetti does not bear evidence of signature in any manner authorized by LBR 9004-1(c)(1)(B) (although the rule authorizes the use of "/s/ Name," the signature line on the declaration contains only the notation "/s/"). Finally, the moving party served only the plaintiff's attorney, and not the plaintiff herself. Although service under Fed. R. Bankr. P. 9014(b) may not technically be required for a motion in an adversary proceeding, the court will require such service in this adversary proceeding; thus, pursuant to Fed. R. Bankr. P. 7004, as required by Fed. R. Bankr. P. 9014(b), any subsequent motions filed by this or any party shall be served on the potential respondent, as well as on any attorney representing the potential respondent.

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

27. 11-31394-D-7 PATTI GRANGER
13-2083 PLO-1
ABDALLAH V. GRANGER

MOTION TO COMPEL
8-6-13 [23]

Tentative ruling:

This is the plaintiff's motion to compel the defendant to make further discovery responses; in particular, to serve amended responses to the plaintiff's first set of interrogatories and to produce documents in response to the plaintiff's request for production of documents. The motion was noticed pursuant to LBR 9014-1(f)(1); the defendant has not filed opposition to the motion. For the following reasons, the motion will be granted in part, conditioned on the plaintiff filing an amended proof of service, as discussed below.

The plaintiff's evidence in support of the motion demonstrates that the plaintiff served the interrogatories and request for production of documents on May 1, 2013; the defendant was required to serve responses by May 31, 2013. Rule 33(b)(2); Rule 34(b)(2)(A). (All rule references are to the Federal Rules of Civil Procedure, as incorporated herein by the applicable Federal Rules of Bankruptcy Procedure.) The defendant served responses to the interrogatories and request for production of documents on June 26, 2013, 26 days after they were due. The

responses to the interrogatories contained both answers and objections. As a result of the late service of the responses, all objections to the interrogatories have been waived. Rule 33(b)(4). The answers do not qualify as answers because they are signed only by the defendant's attorney and not by the defendant herself, as required by Rule 33(b)(1) and (5), and they are not signed under oath, as required by Rule 33(b)(3). In other words, the defendant has, at least up to the date this motion was filed, failed to serve any answers to the interrogatories. Finally, the so-called answers that were served were, as the plaintiff contends, incomplete; they will not be considered to constitute compliance with the court's order if simply re-served as is, although signed under oath by the defendant.

The plaintiff's evidence also demonstrates that the defendant served a response to the request for production of documents 26 days after it was due, and at least up to the date this motion was filed, the defendant had failed to produce a single document. The defendant's response includes general objections. However, all objections have been waived by (1) the late filing of the response (Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992)); (2) the defendant's failure to specify the part of the request objected to, as required by Rule 34(b)(2)(C); and (3) her failure to give reasons for the objections, as required by Rule 34(b)(2)(B).

The defendant's response to the request for production of documents stated that, subject to the objections, all documents in the defendant's possession, custody, and control would be produced. By contrast, consistent with Rule 34(a)(1), the request for production required the defendant to produce all documents in her possession, custody, or control; the defendant's response was therefore incomplete. Second, the response stated explicitly that the documents would be produced on Wednesday, July 3, 2013. By contrast, at least as of the date this motion was filed, August 6, 2013, no documents had been produced.

Under other circumstances, the court would have trouble finding that the plaintiff, as the moving party, in good faith conferred or attempted to confer with the defendant in an effort to resolve this discovery dispute without court action, as required by Rule 37(a)(1). In this regard, the court draws both parties' attention to In re Sanchez, 2008 WL 415115, 2008 Bankr. LEXIS 4239 (Bankr. E.D. Cal. 2008), for the good faith meet and confer standards to which the court ordinarily will hold parties involved in discovery disputes. In particular, there is no evidence the plaintiff's counsel attempted to have an actual meeting or conference with the defendant's counsel. On the other hand, in this case, the defendant has failed to comply in any way with the plaintiff's discovery requests, despite having promised, at least, to produce documents on July 3. As discussed above, the defendant's answers to the interrogatories are not in compliance with the applicable rules, and amount in reality to no answers at all. The plaintiff's counsel did, at least, make several attempts by e-mail to elicit the documents and appropriate answers, without success.

In these circumstances, conditioned on the filing of an amended proof of service, the motion will be granted in part, and the court will order the defendant to provide full and complete answers to the plaintiff's interrogatories, signed under oath by the defendant, no later than 14 days after service of the order granting this motion, and to produce all documents responsive to the plaintiff's request for production, including all such documents in the defendant's possession or custody or under her control, by the same date, in the form described in the request for production. The plaintiff's request for an award of attorney's fees will be deferred to the time of trial.

approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

31. 13-20823-D-11 MELVIN/DARLENE SHIMADA MOTION FOR ORDER TO SHOW CAUSE
MHK-7 8-15-13 [139]

32. 10-42050-D-7 VINCENT/MALANIE SINGH CONTINUED MOTION FOR CONTEMPT
CDH-11 7-24-13 [418]

33. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION BY STEVEN J. WILLIAMSON
12-2321 WFH-1 TO WITHDRAW AS ATTORNEY
BURKART V. ATHWAL 8-20-13 [22]

Tentative ruling:

This is the motion of Wilke, Fleury, Hoffelt, Gould & Birney, LLP ("Wilke, Fleury") to withdraw as counsel for the defendant in this adversary proceeding. Six days after the motion was filed, the law firm of Hackard Law filed a substitution of attorney, pursuant to which it has agreed to substitute into the proceeding as attorney for the defendant. The substitution is signed by the defendant, the defendant's present attorney, Steven Williamson, of Wilke, Fleury, and Michael A. Hackard, Hackard Law, as the defendant's new attorney. Upon approval by the court, the substitution of attorney will render Wilke, Fleury's motion moot. The defendant's new attorney shall submit a proposed order approving the substitution, and upon the signing of that order, this motion will be denied as moot.

The court will hear the matter.

34. 13-27667-D-7 JOHNNY DUANGSAWAT MOTION TO COMPEL
JCK-1 8-9-13 [15]

Tentative ruling:

This is the debtor's motion for an order directing the Los Angeles County Sheriff's Department (the "Sheriff's Dept.") to turn over garnished funds in the amount of \$5,105.16 to the debtor, "pursuant to 11 U.S.C. § 362(a)." The motion was noticed pursuant to LBR 9014-1(f)(2); thus, opposition, if any, will be entertained at the hearing. However, for the guidance of the parties, the court issues this

tentative ruling.

The motion and supporting declaration state that funds in the amount of \$1,741.70 were garnished from the debtor's wages after his petition commencing this case was filed; hence, apparently, the reference to § 362(a). The motion, however, provides no basis for turnover of the balance of the funds, \$3,363.46, other than that the debtor has listed and claimed as exempt \$5,200 in garnished wages. The claim of exemption, assuming it is allowed (amended Schedules B and C were filed August 9, 2013; the time to object has not yet run), would settle the question of the right to the funds as between the debtor and the bankruptcy estate. It would not settle the question of the rights of the debtor vis-a-vis the garnishing creditor, Portfolio Recovery Associates ("Portfolio"). As the debtor has not addressed this question, the court is not inclined to grant the motion, except to the extent of the \$1,741.70 apparently garnished in violation of the automatic stay.

Even as to that amount, however, the court is inclined to deny the motion because the moving party failed to serve Portfolio in strict compliance with Fed. R. Bankr. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Portfolio (1) at a post office box address to the attention of "Bankruptcy"; and (2) through attorneys in San Diego. The first method was insufficient because the rule requires service on a corporation, partnership, or other unincorporated association to the attention of an officer, managing or general agent, or agent for service of process. The second method was insufficient because there is no evidence the attorneys, who according to the Sheriff's Dept. letter filed as an exhibit, represented Portfolio in the garnishment proceeding, are authorized to accept service of process on behalf of Portfolio in bankruptcy proceedings and contested matters pursuant to Rule 7004(b)(3). If Portfolio appears at the hearing, the court will consider this service defect to have been waived, and will hear the matter. Otherwise, the court will continue the hearing to allow the moving party to properly serve Portfolio.

(The Sheriff's Dept. was not served in strict compliance with Cal. Code Civ. Proc. § 416.50, as required by Fed. R. Bankr. P. 7004(b)(6) [service on a governmental organization]. Service was made on the Sheriff's Dept. with no attention line, whereas the statute requires service on a public entity to the attention of the clerk, secretary, president, presiding officer, or other head of its governing body. However, because the debtor served the Sheriff's Dept. at the address on its letter, and because the interest of the Sheriff's Dept. is as a disinterested stakeholder in this matter, the court will not require strict compliance this time.)

Finally, the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. The court will hear the matter.

35. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
JSK-3 AUTOMATIC STAY
KB HOME COASTAL, INC. VS. 8-13-13 [977]

Final ruling:

This matter is resolved without oral argument. This is KB Home Coastal, 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.

36. 13-23288-D-7 LOUIS CHESHIRE

MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
8-13-13 [18]

37. 13-28290-D-7 GENEVIEVE HOLLAND
RMD-1
OCWEN LOAN SERVICING, LLC
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-20-13 [22]

38. 13-21595-D-7 PATRICIA CUNNINGHAM
PA-4

CONTINUED MOTION TO SELL
7-24-13 [65]

39. 13-23621-D-7 PACIFIC ASSET
MANAGEMENT, INC.

MOTION TO CONTINUE HEARING DATE
8-21-13 [48]

Final ruling:

The hearing on this motion is continued to September 18, 2013 at 10:00 a.m. No appearance is necessary on September 4, 2013.

40. 11-26466-D-13 STEVE JOHNSON

MOTION TO CONTINUE HEARING DATE
8-21-13 [59]

CASE DISMISSED 5/3/11

Final ruling:

The hearing on this motion is continued to September 18, 2013 at 10:00 a.m. No appearance is necessary on September 4, 2013.