

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 8, 2014 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

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

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

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

1. 14-27506-D-7 PETER/ROZA RUDEYCHUK ORDER TO SHOW CAUSE - FAILURE
Final ruling: TO PAY FEES
9-9-14 [21]

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

2. 12-41510-D-7 DAVINA MORENO MOTION FOR COMPENSATION BY THE
DNL-4 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
Final ruling: RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
9-4-14 [59]

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.

3. 14-20710-D-7 JERENE BONDS
BLL-5

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JERENE ROLANE
BONDS, REBECCA MOORE, JOHN
REGER
9-10-14 [44]

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.

4. 14-20710-D-7 JERENE BONDS
BLL-6

MOTION TO SELL
9-10-14 [48]

Tentative ruling:

This is the trustee's motion for authority to sell certain real property in Weed, California. The motion states that overbids in increments of \$1,000, accompanied by a \$2,000 deposit, are invited. However, the notice of hearing, which is the only document served on creditors, says nothing about overbids. Further, the notice of hearing states that "[t]he court may decide this matter without a hearing if written objections are not filed with the court before the hearing." This language may have inhibited parties-in-interest who were aware of the possibility of overbidding from attending the hearing for that purpose. For these reasons, the court intends to continue the hearing and require the trustee to file and serve a notice of continued hearing, informing creditors of the possibility of overbidding and that the hearing will go forward for that purpose.

In addition, the court will request clarification from the trustee as to several issues. First the motion indicates that title to the property is presently vested in the debtor, as to a 50% interest, and the debtor's former spouse, Charles Gunn, as to a 50% interest. The motion also refers to a declaration of homestead executed by Charles Gunn and recorded in the Official Records. The motion refers to a state court judgment for dissolution of marriage under which the property was awarded to the debtor. There is no indication the trustee is seeking approval to sell the interest of Charles Gunn pursuant to § 363(h) of the Bankruptcy Code, and the motion was not served on Mr. Gunn. The court requests that the trustee confirm he is seeking no relief against Mr. Gunn by way of this motion.

Second, the motion refers to two abstracts of judgment recorded against the property and held by an individual named Kerrie Moravec. The motion states that both judgments have been satisfied; filed as exhibits are copies of two acknowledgments of satisfaction of judgment, both referring to the same abstract of judgment (the one recorded as Instrument No. 12-0006613). The motion refers only to § 363(b) of the Code, and not to § 363(f). The motion was not served on Kerrie

Moravec, although it was served on the attorney who signed the acknowledgments of satisfaction of judgment. The court requests that the trustee confirm he is not seeking an order authorizing the sale of the property free and clear of any interest of Kerrie Moravec or of any other person or entity.

Third, the preliminary title report filed as an exhibit lists a recorded notice of lis pendens in connection with a state court action by the debtor, as plaintiff, against Charles B. Gunn and Rebecca Moore, as defendants. As the debtor is a party to a compromise with the trustee (also on this calendar), the court presumes the lis pendens will be released by the debtor. In any event, the court requests the trustee confirm he is not seeking an order authorizing the sale free and clear of the interest of that lis pendens.

Finally, the motion refers to property taxes and a lien for defaulted property taxes; however, the County Tax Collector was not served with the motion. As the court intends to continue the hearing to require service of a notice of continued hearing, as discussed above, the court will also require that the trustee serve the Tax Collector.

The court will hear the matter.

5. 14-25816-D-11 DEEPAL WANNAKUWATTE MOTION FOR RELIEF FROM
BRK-1 AUTOMATIC STAY
DOUGLAS BERTSCH VS. 8-29-14 [152]

Final ruling:

This motion has been withdrawn by stipulated order entered September 24, 2014. As such, the matter is removed from calendar.

6. 14-25816-D-11 DEEPAL WANNAKUWATTE MOTION FOR RELIEF FROM
WFH-1 AUTOMATIC STAY
IMG FUNDING, LLC VS. 9-10-14 [169]

Final ruling:

The hearing on this motion is continued to October 22, 2014 at 10:00 a.m. No appearance is necessary on October 8, 2014.

7. 14-25417-D-7 CHRISTOPHER BEWLEY AND MOTION FOR TURNOVER OF PROPERTY
DNL-3 THERESE GERMAINE 9-10-14 [27]

8. 14-28018-D-7 JERRY CANNON
GJS-1

MOTION TO ABANDON
8-29-14 [9]

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, the debtor has demonstrated the property to be abandoned is of inconsequential value to the estate, and the trustee has filed a report of no assets. 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.

9. 14-28819-D-7 CHARLES MERIDITH
MRE-1

MOTION TO AVOID LIEN OF CPF
RENAISSANCE CREEK, LLC
9-3-14 [7]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by CPF Renaissance Creek, LLC ("CPF"). The motion will be denied for the following reasons. First, the moving party failed to serve CPF in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served CPF (1) through the attorneys who obtained its abstract of judgment, and (2) in care of Cornerstone Real Estate Advrs., LLC. The first method was insufficient because 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, whereas here, there is no evidence the attorneys who obtained CPF's abstract of judgment are authorized to accept service of process on CPF's behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient for the same reason - there is no evidence Cornerstone Real Estate Advrs., LLC is authorized to receive service of process on behalf of CPF.

Second, the moving party failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6). "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). Here, although the motion states that the debtor has claimed an exemption in the property in the amount of \$10.00, that is not the case. The debtor's Schedule C shows that no exemption has been claimed in the real property to which the judicial lien has attached.

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

10. 14-25820-D-11 INTERNATIONAL MOTION FOR RELIEF FROM
WFH-1 MANUFACTURING GROUP, INC. AUTOMATIC STAY
IMG FUNDING, LLC VS. 9-10-14 [224]

Final ruling:

The hearing on this motion is continued to October 22, 2014 at 10:00 a.m. No appearance is necessary on October 8, 2014.

11. 14-22526-D-7 DAVID JONES MOTION TO DISMISS CASE
14-2161 PLC-1 8-20-14 [12]
MEREDITH V. JONES ET AL

Tentative ruling:

This is the motion of defendant Pamela Ann Jones to dismiss the plaintiff's complaint as against Pamela Ann Jones pursuant to Fed. R. Civ. P. 12(b)(6), made applicable herein by Fed. R. Bankr. P. 7012(b), for failure to state a claim upon which relief can be granted. David Clark Jones ("David Jones") is also a defendant in this action, but is not a party to this motion. (The use of the "defendant" in the singular will refer to the moving party, Pamela Ann Jones.) The plaintiff, John Meredith, has filed opposition. For the following reasons, the court will conditionally grant the motion.

By his complaint herein, the plaintiff seeks a determination that a debt allegedly owed to him by the defendants is nondischargeable pursuant to § 523(a)(4) and (a)(6), and a determination that the defendants are not entitled to a discharge pursuant to several subdivisions of § 727(a).¹ The defendant contends that, as to her, the complaint fails to state a claim upon which relief can be granted, because she is "not a debtor." Def.'s P. & A., filed Aug. 21, 2014 ("P. & A."), at 3:7. The court takes this to mean the complaint fails to state a claim against the defendant because she is not a debtor in the bankruptcy case in which this adversary proceeding is pending. The defendant goes on: "Plaintiff has not cited any code, rule or case law that indicates that the Bankruptcy Court has authority to deny discharge when no discharge is sought." *Id.* at 3:7-8. Thus, in the defendant's view, "[t]aking every fact as true, there are not facts upon which the Court could rely upon [sic] to deny a discharge when no discharge is sought." *Id.* at 3:9-10.

In response, the plaintiff cites § 524(a)(3) and (b)(2). The former provides that a bankruptcy discharge bars the collection of a community debt from interests of the debtor and the debtor's spouse in community property acquired post-petition, except a community debt that is excepted from discharge under § 523 or would be so excepted in a case concerning the non-debtor spouse commenced on the date of filing of the debtor's case. § 524(a)(3). The second subsection, § 524(b)(2), provides that the first, § 524(a)(3), does not apply if the court would not grant the non-debtor spouse a discharge in a chapter 7 case concerning the spouse commenced on the date of filing of the debtor's case. § 524(b)(2)(A). The court is to make that determination - of whether it would grant the non-debtor spouse a discharge - within the time and in the manner provided for a § 727 determination as to whether the

debtor is entitled to a discharge. § 524(b)(2)(B). This so-called community property discharge was explained well in Rooz v. Kimmel (In re Kimmel), 378 B.R. 630, 634-37 (9th Cir. BAP 2007), in which the panel also noted that a creditor may raise nondischargeability issues against the non-debtor spouse, and may also raise § 727(a) issues against the non-debtor spouse. Id. at 636-37. Both types of actions must be brought within the time allowed for the filing of dischargeability and bar to discharge complaints in the case of the debtor spouse. Id. at 637. In short, a creditor may pursue § 523 and § 727 claims against a debtor's spouse, by way of § 524(a)(3) and (b)(2), even when that spouse is not himself or herself a debtor in bankruptcy.

The court believes this is what the plaintiff intended to do in this case. In his complaint, the plaintiff alleges that the defendant is the spouse of defendant David Clark Jones, that the defendants were married at the time of the written agreement on which the plaintiff's claims are based, and that they have been married at all times since then. However, the complaint is written as if the defendant were herself a debtor in the underlying bankruptcy case. Thus, in the prayer, the plaintiff requests a determination that the debt allegedly owed by the defendants is nondischargeable, under § 523(a)(4) and (a)(6), and a determination that the defendants should be denied a discharge, under various subdivisions of § 727(a). The complaint does not mention § 524(a)(3) or (b)(2).

By contrast, under § 524(a)(3) and (b)(2), a plaintiff would seek, as to the non-filing spouse, a determination that a community claim would be excepted from discharge under § 523 in a case concerning the non-filing spouse commenced on the date of filing of the debtor's case (§ 524(a)(3)), and/or a determination that the court would not grant the non-filing spouse a discharge in a chapter 7 case concerning the non-filing spouse commenced on the date of filing of the debtor's case (§ 524(b)(2)(A)). This may seem a fine distinction; indeed, perhaps, a distinction without a difference. But here, the plaintiff's failure to plead in this fashion apparently resulted in the defendant misunderstanding the nature of the relief sought against her, and a result, she filed this motion. Thus, the court will conditionally grant the motion, as set forth below.

The defendant also seeks dismissal on the ground that the complaint does not sufficiently allege that the defendant owes a debt to the plaintiff.

. . . Plaintiff states the agreement was made between Debtor David Jones and the Merediths for the purchase of the Stock. No where in the Complaint does Plaintiff allege that Pamela Ann Jones was a party to the purchase of the Stock from the Merediths or that she signed a note payable or other instrument that would cause her to be indebted to Plaintiff. Plaintiff apparently relies on the fact that Pamela Ann Jones is the spouse of Debtor David Jones.

P. & A. at 3:15-20. The defendant is correct as to those particular facts, but not as to her conclusion.

The complaint alleges that David Jones purchased the shares of a corporation called Telecomm Communications, Inc. ("TEI") from the plaintiff and his wife (the "Merediths"), promising that he, David Jones, would make payments to the Merediths, and promising that TEI would make additional payments to or for the benefit of the Merediths, such as paying their cell phone bills, health insurance premiums, and the like.² The complaint does not allege that defendant Pamela Ann Jones was a party to the purchase agreement or that she signed a note or other instrument in favor of the

Merediths. It does, however, allege - as regards defendant Pamela Ann Jones - that (1) together with David Jones, she "effectively controls [TEI] and operates it for their own benefit to the detriment of the other shareholders";³ (2) she is, and at the time of the fraudulent actions described in the complaint was, the Secretary of TEI, and is, with David Jones, a member of the Board of Directors and a majority shareholder of TEI; (3) together with David Jones and an employee of TEI named Viliami Paea, she conspired to transfer all or almost all of TEI's assets to a new entity to be owned on paper by Viliami Paea; (4) the transfer was intended to enable David Jones and TEI to evade their debts to the plaintiff and other creditors; (5) together with David Jones, she incorporated Everything Radios Incorporated, and transferred almost all the assets of TEI to Everything Radios; (6) TEI did not receive reasonably equivalent value for the transfer; (7) following the transfer, TEI was engaged in a business for which the remaining assets of TEI were unreasonably small in relation to the business, and were insufficient to pay its debts; (8) TEI was insolvent or became insolvent at the time of the transfer; (9) she, David Jones, and Viliami Paea made the transfer with the actual intent to hinder, delay, or defraud a creditor of TEI and a creditor of David Jones; (10) the transfer was not fully disclosed to the plaintiff and not fully disclosed in TEI's bankruptcy schedules;⁴ and (11) prior to the transfer, TEI had been sued and had unpaid judgments against it.⁵

These allegations, if true, would be sufficient to impose liability on the part of defendant Pamela Ann Jones to the plaintiff. First, the complaint alleges the defendant herself engaged in the fraudulent activity that resulted in the alleged harm to the plaintiff. However, even if the complaint did not include those allegations of direct participation by Pamela Ann Jones, the fraud of one spouse may be imputed to the other spouse, for purposes of nondischargeability, if in addition to the marital relationship, there was a sufficient business partnership or agency relationship between the spouses. See Tsurukawa v. Nikon Precision, Inc. (In re Tsurukawa), 287 B.R. 515, 524 (9th Cir. BAP 2002). The court believes the allegations of the complaint are sufficient to allege such a relationship between David Jones and Pamela Ann Jones. Thus, the complaint appears to contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009), citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, (2009), in turn quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). At any rate, the defendant has not made any argument on this point, and the court is not prepared to conclude, based on its own reading of the complaint, that the complaint is insufficient to state a claim on which relief can be granted.

The court concludes, as discussed in the first part of this ruling, that the complaint purports to state claims against the defendant under §§ 523(a) and 727(a), whereas she is not a debtor in the bankruptcy case in which this adversary proceeding is pending, and is not, so far as is alleged, a bankruptcy debtor at all. Accordingly, the complaint fails to state a claim against her under those Code sections. However, the complaint does set forth facts that would support findings that the plaintiff holds a claim against the defendant that would be nondischargeable under § 523 in a case concerning the defendant commenced on the date of filing of David Jones' case, and a determination that the court would not grant the defendant a discharge in a chapter 7 case concerning the defendant commenced on the date of filing of David Jones' case. Thus, the court will permit the plaintiff to amend the complaint to set forth claims for relief under § 524(a) (3) and (b) (2) (A).

For the reasons stated, the court will conditionally grant the motion and

dismiss the complaint as against the defendant unless the plaintiff files an amended complaint within 30 days from the date of the order on this motion. If the plaintiff does not file an amended complaint within that time, the complaint will be dismissed as against the defendant without further notice or hearing. If the plaintiff files an amended complaint within 30 days from the date of the order, the defendant shall file an answer or other response in accordance with applicable rules. The court will hear the matter.

1 All statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

2 The plaintiff's wife has since died; the complaint alleges that the plaintiff is her legal successor.

3 The complaint alleges the Merediths transferred 52% of the shares of TEI to David Jones and retained the other 48% until they were paid in full, which has not happened. Thus, the Merediths remained and the plaintiff John Meredith now remains a minority shareholder.

4 TEI, through David Jones as its CEO, filed a chapter 7 petition in this court on February 14, 2014, commencing Case No. 14-21431-C-7.

5 The complaint contains similar allegations, as against the defendant herself, as well as David Jones, sufficient to support findings, under several subdivisions of § 727(a), that the defendant would not be entitled to a discharge in a chapter 7 case concerning the defendant commenced on the date of filing of David Jones' petition.

12. 13-29030-D-7 WILLIAM/JANET CHENG ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-2-14 [583]

Final ruling:

The relief from stay filing fee that is the reason this order to show cause was issued has been paid. As such, this order to show cause will be discharged without further action by minute order. No appearance is necessary.

13. 11-41448-D-7 GHANSHYAM/JIGNASA PATEL MOTION FOR COMPENSATION BY THE
HCS-4 LAW OFFICE OF HERUM, CRABTREE, AND SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
9-10-14 [246]

Final ruling:

This is the motion of the trustee's counsel for a first and final allowance of compensation. The motion was noticed pursuant to LBR 9014-1(f)(1), and no opposition has been filed. However, the court is not prepared to grant the motion at this time because the moving party failed to serve the creditor that filed Claim Nos. 9 and 10 (the holder of the largest filed claim in the case) at the address on its proofs of claim, as required by Fed. R. Bankr. P. 2002(g), and also failed to

serve the same creditor at the address designated in its request for special notice, DN 130, as required by the same rule.

The court will continue the hearing to October 22, 2014, at 10:00 a.m., the moving party to file a notice of continued hearing and serve it on the above-described creditor at the address on its proofs of claim and request for special notice no later than October 10, 2014. The moving party shall file a proof of service no later than October 16, 2014.

The hearing will be continued by minute order. No appearance is necessary on October 8, 2014.

14. 14-25148-D-11 HENRY TOSTA CONTINUED MOTION TO USE CASH
MF-13 COLLATERAL
9-4-14 [182]

15. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO CONSOLIDATE LEAD CASE
12-2430 GJH-1 12-02430 WITH 12-02478, MOTION
BURKART V. SINGH TO FILE CONSOLIDATED AMENDED
COMPLAINT
9-10-14 [76]

Final ruling:

The hearing on this motion has been continued to November 5, 2014 at 10:00 a.m. by an order entered on September 24, 2014. No appearance is necessary.

16. 09-29162-D-11 SK FOODS, L.P. CONTINUED OMNIBUS OBJECTION TO
SH-260 CLAIMS
6-30-14 [4895]

Final ruling:

This is the trustee's objection to the claims of Carmel Wine Merchants, LLC, Claim Nos. 68 and 278. The objection has been withdrawn by the trustee. Accordingly, this matter is removed from calendar. No appearance is necessary.

17. 09-29162-D-11 SK FOODS, L.P. CONTINUED OMNIBUS OBJECTION TO
SH-261 CLAIMS
6-30-14 [4898]

Final ruling:

This is the trustee's objection to the claim of Carmel Wine Merchants, LLC, Claim No. 278. The objection has been withdrawn by the trustee. Accordingly, this matter is removed from calendar. No appearance is necessary.

18. 09-29162-D-11 SK FOODS, L.P. CONTINUED OMNIBUS OBJECTION TO
SH-264 CLAIMS
6-30-14 [4908]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

19. 09-29162-D-11 SK FOODS, L.P. CONTINUED OMNIBUS OBJECTION TO
SH-275 CLAIMS
7-16-14 [4971]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the trustee's objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

20. 14-28662-D-7 NATALIYA SELIVANOVA MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
8-27-14 [5]

21. 14-25671-D-7 ROY/PAULA CHITWOOD
ADS-1

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
8-28-14 [13]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Capital One Bank (USA), N.A. (the "Bank"). The motion will be denied for the following reasons. First, the notice of hearing gives the hearing date as October 8, 2014 in the caption but September 24, 2014 in the text. Second, the proof of service does not contain the docket control number, as required by LBR 9014-1(e)(3), and contains incorrect information about the date, time, and place of the hearing.

Third, the moving parties failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving parties served the Bank (1) through the attorneys who obtained its abstract of judgment; (2) by first-class mail addressed to a post-office box, with no attention line; and (3) by first-class mail to the Bank's registered agent in Virginia. The first method was insufficient because there is no evidence the attorneys who obtained the abstract of judgment are authorized to receive service of process on behalf of the Bank in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 93 (9th Cir. BAP 2004). The second method was insufficient because an FDIC-insured institution such as the Bank must be served to the attention of an officer, whereas here, there was no attention line. The third method was insufficient because an FDIC-insured institution must be served to the attention of an officer, whereas it is unlikely an officer of the Bank is to be found at the location of a corporate agent for service of process. Finally, the second and third methods were insufficient for the additional reason that service on an FDIC-insured institution must be by certified mail, not first-class mail.

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

22. 14-25678-D-7 SARAH WANNAKUWATTE
DNL-1

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
9-5-14 [30]

23. 14-27978-D-7 KIMECHIA WILLIAMS MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
8-5-14 [5]

24. 14-28183-D-7 RANDALL/JANINE LANEY MOTION FOR RELIEF FROM
VVF-1 AUTOMATIC STAY AND/OR MOTION
AMERICAN HONDA FINANCE FOR ADEQUATE PROTECTION
CORPORATION VS. 9-6-14 [10]

Final ruling:

This matter is resolved without oral argument. This is American Honda Finance Corporation'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.

25. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
AMS-3 AUTOMATIC STAY
CASTLE PRINCIPLES, LLC VS. 9-11-14 [1217]

Final ruling:

This matter is resolved without oral argument. This is Castle Principles, LLC'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.

26. 11-22685-D-7 BLUE RIBBON STAIRS, INC. MOTION FOR RELIEF FROM
TFO-2 AUTOMATIC STAY
KB HOME COASTAL, INC. VS. 8-27-14 [1196]

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.

27. 14-28694-D-11 RICHARD/JENNIFER GARCIA STATUS CONFERENCE RE: VOLUNTARY
PETITION
8-28-14 [1]

Tentative ruling:

This is the initial status conference in this chapter 11 case. The court does not ordinarily issue tentative rulings for chapter 11 status conferences; however, the court has several concerns about this case.

First, in his Status Conference Statement, the debtors' attorney, Anthony Hughes ("Counsel"), failed to use the categories set forth in the court's Order to (1) File Status Report; and (2) Attend Status Conference, issued September 2, 2014 (the "scheduling order"); instead, he created his own categories. The scheduling order makes the categories listed therein mandatory, not suggested, and Counsel was required to address them under the hearings listed in the scheduling order and in the order listed therein. The court will hear this matter as scheduled on October 8, 2014, but intends to continue the hearing to require Counsel to comply with the scheduling order.

Second, the court has questions concerning the amounts paid by the debtors to Counsel during the year preceding the filing of this case and about Counsel's status as a disinterested person in this case. The debtors' Statement of Financial Affairs, at question 9, states the following regarding payments to Hughes Financial Law:

Date of Payment, Name of Payer if Other Than Debtor:
"N/A"

Amount of Money or Description and Value of Property:

"As of 8/28/14, Client has a \$13,000 credit due to billing error related to defending Client's [sic] in their State Court litigation (Wells Fargo vs. Garcia's; Case No.: CV13-495). Credit is being applied to this Chapter 11 case as: \$7,000 earned pre-petition, leaving a credit balance of \$6,000.00 for post-petition

retainer."

The same language appears in Counsel's Rule 2016(b) statement. Neither the Statement of Financial Affairs nor the Rule 2016(b) statement discloses the dates of payments to Counsel, as required, and neither discloses the source of the payments. The answer "N/A" in response to the question requiring the listing of dates of payments and names of payers if other than the debtor suggests that the payments were made by the debtors. However, where the Rule 2016(b) statement required Counsel to check a box describing the source of the compensation paid to him as the "Debtor" or "Other," counsel checked the box "Other." Thus, the court cannot be sure whether the compensation paid to Counsel was paid by the debtors or by some other person or entity.

Further, the language quoted above does not disclose how much compensation was paid by the debtors to Counsel during the year prior to the filing. The Statement of Financial Affairs and Rule 2016(b) statement technically do not require the disclosure of this information, only information as to the amounts paid for Counsel's bankruptcy-related services. However, the sketchy information Counsel did choose to provide suggests Counsel has represented the debtors in state court litigation. Information about that representation, including the amounts paid to Counsel by the debtors or others, must be disclosed in Counsel's declaration supporting the debtors' application to employ him in this case, as a connection between the debtors and Counsel. Over five weeks into this case, no employment application has yet been filed.

Finally, as to the \$7,000 "earned pre-petition," the court will require, in connection with any fee application filed by Counsel in this case, disclosure of the information required by § 329(a) of the Bankruptcy Code with respect to the services performed and amounts charged, with sufficient detail to enable the court to determine whether the compensation paid represented the reasonable value of those services.

The court has an additional concern about Counsel's Rule 2016(b) statement, where Counsel states that by agreement with the debtors, the fee does not include services for representing the debtors "in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding." Except as to adversary proceedings and dischargeability actions, to the extent they are filed as adversary proceedings, this language conflicts with the requirements of LBR 2017-1(a)(1), and Counsel will be required to correct it.

The court will hear the matter.

28. 13-21595-D-7 PATRICIA CUNNINGHAM
JB-2

MOTION FOR COMPENSATION FOR
GABRIELSON & COMPANY,
ACCOUNTANT(S)
9-3-14 [193]

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. 14-25816-D-11 DEEPAL WANNAKUWATTE MOTION TO EMPLOY COLLIERS
DNL-8 INTERNATIONAL CA, INC. AS
BROKER(S)
9-24-14 [192]
30. 14-25820-D-11 INTERNATIONAL MOTION TO EMPLOY TERAOKA &
FWP-1 MANUFACTURING GROUP, INC. PARTNERS LLP AS SPECIAL COUNSEL
9-24-14 [247]
31. 14-29020-D-7 JYOTISHNA SHARMA MOTION TO RECONSIDER
WAJ-1 9-23-14 [17]
32. 14-27534-D-7 JENNY CASTILLO MOTION FOR APPOINTMENT OF A
CAH-2 PERSONAL REPRESENTATIVE FOR THE
DEBTOR
9-19-14 [21]

33. 14-22151-D-7 RAYMOND SADOWSKI MOTION FOR APPROVAL OF
PD-2 STIPULATION REGARDING USE,
DISTRIBUTION, AND SURCHARGE OF
CASH COLLATERAL
9-17-14 [41]
34. 09-29162-D-11 SK FOODS, L.P. MOTION TO COMPROMISE
SH-291 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JOHN SHEAHAN AND
IAN RUSSELL LOCK
9-19-14 [5230]
35. 09-29162-D-11 SK FOODS, L.P. MOTION TO COMPROMISE
SH-292 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH OLAM TOMATO
PROCESSORS, INC.
9-24-14 [5241]
36. 14-26167-D-7 BRETT/JESSICA WATERBURY MOTION FOR WAIVER OF PERSONAL
EJS-1 FINANCIAL MANAGEMENT COURSE
9-17-14 [14]

37. 12-24884-D-7 RAMON/MARILOU ARROYO
MSM-3

MOTION TO AVOID LIEN OF FIA
CARD SERVICES, N.A.
9-24-14 [41]