UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

November 5, 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.	14-29412-D-7 JFL-1 SETERUS, INC. VS.	ADAM DYE	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-6-14 [10]

Final ruling:
The moving party failed to serve the debtor's attorney as required by FRBP 2004(g). As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

2.	14-25816-D-11 WFH-1 IMG FUNDING, LLC VS.	DEEPAL WANNAKUWATTE	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 9-10-14 [169]

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

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

4.	14-25820-D-11 WFH-1 IMG FUNDING, LLC VS.	INTERNATIONAL MANUFACTURING GROUP, INC.	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 9-10-14 [224]

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

5.	14-28822-D-7 CAH-1	MELVIN SVETICH	MOTION TO COMPEL ABANDONMENT 9-26-14 [12]

Final ruling:

This is the debtor's motion to compel abandonment of his business and business equipment. The motion will be denied because there is no proof of service on file. 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)). Thus, the court will require service on the trustee and all creditors of any motion to compel abandonment.

In this case, there is no evidence of service on the trustee or any creditors. In addition, the debtor's amended Schedule G lists one lease and four executory contracts, and there is no evidence the parties to the lease and contracts were served. In light of the very broad definition of "creditor" under the Bankruptcy Code (see § 101(5) and (10)), there is no doubt that the parties to the lease and contracts are creditors within the applicable definition, and are required to be served where "all creditors" are to be served.[1]

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

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1 Moreover, Fed. R. Bankr. P. 1007(a)(2) requires a debtor to list on his or her master address list all parties listed on his or her Schedules D, E, F, G, and H. In this case, it appears the debtor's lessor was listed (although by address only and not name); however, the four parties to executory contracts with the debtor were not listed.

6. 14-30023-D-11 CHARLES MARTINEZ — PRELIMINARY STATUS CONFERENCE RE: VOLUNTARY PETITION 10-7-14 [1]

7. 14-23125-D-7 HAVEN/DAVID RITCHIE — MOTION TO DISMISS CASE PJR-4 10-8-14 [65]

Tentative ruling:

This is the motion of Tri Counties Bank (the "Bank") to dismiss this case pursuant to § 707(a) of the Bankruptcy Code. The debtors have filed opposition, the trustee has filed a response, and the Bank has filed a reply. For the following reasons, the motion will be denied.

The Bank brings its motion on the ground that the debtors, both hospital physicians, earn a very large amount of money. The debtors earn a combined $72,316 per month in gross wages, and have combined take-home pay, after tax withholdings, insurance, and voluntary 401k contributions, of $51,620 per month. After payment of their personal and household expenses, including payments toward student loans, back taxes, and current taxes in addition to the payments withheld from their paychecks, the debtors have $23,934 per month remaining, or $287,208 per year. Based on those figures, the Bank contends the debtors would, without any hardship to themselves or their children, be able to pay their general unsecured debts in full in about 13 months.

The debtors' response is that they need to cut back on their extra shifts at work, and possibly return to private practice. In any event, they claim they will definitely see a reduction in their income. However, even taking out the overtime pay the debtors have included on their Schedule I, the debtors would still have $53,020 per month in gross income, or $636,240 per year. Based on those figures, the court would be hard-pressed to conclude that the debtors could not repay a significant portion, if not all, of their general unsecured debt in a relatively short period of time.

Nevertheless, this matter is determined based not on the facts but on the law.[1] Pursuant to § 707(a), the court may dismiss a chapter 7 case for "cause," including unreasonable prejudicial delay by the debtor, nonpayment of fees, and failure to timely file required schedules and statements. The Bank acknowledges that this case does not fall within the scope of any of those three examples; however, those examples are not exclusive. Neary v. Padilla (In re Padilla), 222 F.3d 1184, 1191 (9th Cir. 2000). Thus, the question is whether the circumstances alleged by the Bank; namely, the debtors' ability to pay their debts within a reasonable period of time, constitutes cause for dismissal under § 707(a). The Ninth Circuit's decision in Padilla is not directly on point, but it does provide a useful starting point. In that case, the United States Trustee moved to dismiss on the ground the debtor had filed the case in bad faith. The United States Trustee alleged that the debtor had engaged in a credit card "bust-out"; that is, he had run up a large amount of credit card debt in the year before he filed his bankruptcy case.

Acknowledging a split of authority among the circuits, the Ninth Circuit held that "bad faith as a general proposition does not provide 'cause' to dismiss a Chapter 7 petition under § 707(a)." 222 F.3d at 1191. The court contrasted the chapter 7 context from that in the reorganization chapters, chapters 11 and 13, noting that in the latter, the debtor and creditors have an ongoing relationship with each other after the filing of the petition. The court concluded that "bad faith per se can properly constitute 'cause' for dismissal of a Chapter 11 or Chapter 13 petition but not of a Chapter 7 petition under § 707(a)." Id. at 1193.

Next, "[h]aving discarded the 'bad faith' label in favor of simply examining the actions of the debtor that are complained of, . . . , the remaining issue is whether [the debtor's] credit card bust-out provides 'cause' for dismissal under § 707(a)." Padilla, 222 F.3d at 1193. The court held that if the particular debtor misconduct in question – in that case, the credit card bust-out, falls under a specific provision of the Code other than § 707(a), it must be addressed under that other provision, and not under § 707(a). Id. at 1192. Thus, debtor Padilla's case could be dismissed under § 707(a) only "if credit card bust-out is not a type of misconduct or cause contemplated by any specific Code provision applicable to Chapter 7 petitions." Id. at 1193. The court concluded that because the credit card debt was consumer debt, and because § 707(b) was enacted to address abuses of chapter 7 in cases of consumer debt, the bust-out was a type of misconduct that fell within the scope of § 707(b), and therefore, it did not constitute cause for dismissal under § 707(a). Id. at 1194.[2]

The Padilla holding was fleshed out several years later, when the Ninth Circuit construed it as creating a two-part inquiry to determine whether particular conduct falls within the scope of § 707(a).

> First, we must consider whether the circumstances asserted to constitute 'cause' are 'contemplated by any specific Code provision applicable to Chapter 7 petitions.' If the asserted 'cause' is contemplated by a specific Code provision, then it does not constitute 'cause' under § 707(a). If, however, the asserted 'cause' is not contemplated by a specific Code provision, then we must further consider whether the circumstances asserted otherwise meet the criteria for 'cause' for [dismissal] under § 707(a).

Sherman v. SEC (In re Sherman), 491 F.3d 948, 970 (9th Cir. 2007) (citations omitted). The court further explained the first part of the test as follows:

> The only sensible way to approach the first part of the Padilla inquiry is to examine whether other specific Code provisions address the type of misconduct alleged, not whether other specific provisions covering the actual misconduct alleged would give rise to relief under the Code. If another Code provision addresses the general type of misconduct but does not cover the actual misconduct, that omission is best understood as demonstrating that Congress did not mean to reach the actual misconduct at issue. Any other approach would preclude bankruptcy relief in circumstances in which all indications suggest that Congress made a considered decision about the coverage of the Code and intended to provide bankruptcy relief.

Sherman, 491 F.3d at 970-71. Thus, for example, the court concluded that one of the types of misconduct alleged in that case – the debtors' "deliberately exaggerat[ing] their liabilities and expenses in order to create the misleading impression that they were in dire financial need of bankruptcy relief" (491 F.3d at 970) – fell within the scope § 727(a)(4)(A), and thus, that section, and not § 707(a), provided the proper remedy. Id. at 973. Similarly, the debtors' tactic of paying certain creditors and not others, fell within the scope of § 547(b), which therefore provided the remedy, and that misconduct could not be addressed under § 707(a). Id. at 972-73.

The court is faced here with a situation that is the reverse of the situation in Padilla. No one disputes that the debtors' debts in this case, as contrasted with Padilla – are primarily business debts. Thus, § 707(b) does not apply, and arguably, Padilla does not apply. However, the Padilla holding regarding bad faith, as well as other language in the decision, strongly suggests that a business debtor's ability to pay is not cause for dismissal under § 707(a). First, in a sense, certainly, the decision of the high-earner debtors in this case to file a chapter 7 petition rather than attempting to repay some or all of their debts may be said to constitute bad faith, and indeed, the Bank states that the debtors' circumstances "persuasively demonstrate the lack of good faith in the debtors' Chapter 7 filing." Mot. at 3:12-13. However, the Padilla court held that "bad faith" does not constitute cause under § 707(a). 222 F.3d. at 1193.

Second, the Padilla court described the three specific examples of cause listed in § 707(a) – unreasonable delay, nonpayment of fees, and failure to timely file schedules and statements – as "technical and procedural grounds." See 222 F.3d at 1192. The ability to pay one's debts is of an entirely different nature. Third, the Padilla court cited several cases from within and outside the Ninth Circuit that either held or stated in dicta that ability to pay does not constitute cause for dismissal under § 707(a). Citing In re Motaharnia, 215 B.R. 63, 67 (Bankr. C.D. Cal. 1997), the Padilla court observed that "[h]ad 'cause' in § 707(a) been broadly construed, § 707(b) would have been unnecessary." 222 F.3d at 1194. The Motaharnia court, in turn, stated that "[m]any of the 'bad faith' cases rest their decisions, at least in part, on the ability of the debtor to repay some or all of the debt owing. There is no evidence that Congress intended for this to be considered cause under § 707(a)." 215 B.R. at 68.

The Padilla court also cited In re Khan, 172 B.R. 613 (Bankr. D. Minn. 1994), in which the court stated that "the question of whether a Chapter 7 debtor could meet dischargeable debt obligations in whole or part from future resources is irrelevant to a motion under § 707(a)." 172 B.R. at 622. The Khan court quoted the following from the legislative history of § 707(a):

> [11 U.S.C. § 707(a)] does not contemplate, however, that the ability of the debtor to repay his debts in whole or in part constitutes adequate cause for dismissal. To permit dismissal on that ground would be to enact a non-uniform mandatory chapter 13, in lieu of the remedy of bankruptcy. The Committee has rejected that alternative in the past, and there has not been presented any convincing reason for its enactment in this bill.

Khan, 172 B.R. at 622-23, quoting H.R. Rep. No. 595, 95th Cong. 1st Sess. 380 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 94 (1978). The Khan court also relied on the rule of statutory construction under which a specific statute controls over a more general one addressing the same subject matter. Applying the rule to § 707, the court stated:

> In enacting § 707(b), Congress clearly was speaking to the issue of those debtors in Chapter 7 whom it thought should not be in liquidation through bankruptcy, because they would have the resources to pay their creditors in the future. It did so by enacting a narrowly-drawn statute. The power to invoke that statute is granted to only two participants in the bankruptcy process [the United States Trustee and the court]. Congress limited the class of petitioners whose cases would come under such scrutiny, to debtors whose financial distress arose from non-business transactions.

Khan, 172 B.R. at 624. The court went on:

> Under the canons previously noted, this statute must be deemed to be Congress's word as to the scope of the remedy of dismissal on a particular sort of ground: only pursuant to the authority of this statute [§ 707(b)], and subject to its strictures, can the Bankruptcy Court dismiss a Chapter 7 case on a finding that a debtor could pay his or her debts in whole or in part from future personal income. The more generally-defined remedy of dismissal for "cause" under § 707(a) simply cannot lie on the same set of facts. In passing on a motion for dismissal under § 707(a), then, the Bankruptcy Court should exclude any consideration that goes to the debtor's financial means. It cannot make judgmental pronouncements that the debtor really should be paying his or her debts rather than seeking refuge in bankruptcy liquidation.

Id.

It was Khan that the Padilla court cited regarding the rule of statutory construction under which a more specific statute prevails over a general one on the same subject (see Padilla, 222 F.3d at 1192), concluding that "[t]herefore, a debtor's misconduct should be analyzed under the most specific Code provision that addresses that type of misconduct." Id. This court believes that just as the Padilla court applied that rule of statutory construction in reaching its conclusion that a credit card bust-out falls within the more specific § 707(b), and not the more general § 707(a) (222 F.3d at 1192-94), that a debtor's ability to pay falls within the scope of the more specific § 707(b), and therefore, does not constitute cause under § 707(a).

Finally, the Padilla court expressly agreed with the Eighth Circuit's decision in Huckfeldt v. Huckfeldt (In re Huckfeldt), 39 F.3d 829, 832 (8th Cir. 1994), in holding that bad faith does not constitute cause for dismissal under § 707(a).[3] In

reaching its conclusion, the Eighth Circuit, in turn, had agreed with Khan which, the Eighth Circuit said, had criticized the bad faith cases for basing decisions under § 707(a) "on ability-to-pay factors that should be analyzed exclusively under § 707(b)." Huckfeldt, 39 F.3d at 832, citing Khan, 1994 WL 515358 at * 5-9.

Although this court has not found a case from a court within the Ninth Circuit directly addressing the question whether ability to pay is a ground for dismissal under § 707(a), for the reasons discussed above, the court believes it is not. As the debtors' ability to repay their debts, either in whole or in part, is the sole basis for the Bank's motion, the motion will be denied.[4]

The court will hear the matter.

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1 For this reason, the trustee's response to the motion is not relevant. He states that the debtors have cooperated fully with him, that he has collected certain non-exempt assets, that he expects to make distributions only on priority tax claims and not on general unsecured claims, and that he has visited the debtors' residence and finds that they enjoy a comfortable, but not lavish or extravagant, lifestyle.

2 "The history of § 707(b) demonstrates that this subsection, rather than § 707(a), was intended as the mechanism by which the court or the United States trustee could address general concerns regarding discharge of consumer debt." Id.

3 "As is discussed below, we agree with the Eighth Circuit that bad faith as a general proposition does not provide 'cause' to dismiss a Chapter 7 petition under § 707(a)." Padilla, 222 F.3d at 1191.

4 In their reply, the debtors refer to "the implicit good faith test inherent in every bankruptcy filing" (Reply at 2:11), concluding therefrom that this court "does have the authority under the general provisions of section 707(a) to dismiss this case." Id. at 2:11-12. The Ninth Circuit in Padilla declined to reach the issue of whether the court has inherent authority to dismiss a case for bad faith (222 F.3d at 1193, n.6), but did cite Huckfeldt for the proposition that "[i]f the bankruptcy court elects instead to act under the inherent judicial power to punish a bad faith litigant, that action should not be taken under § 707(a)." Id. citing Huckfeldt, 39 F.3d at 832. Huckfeldt, in turn, cited Khan, which, in its turn, referred to the court's "'inherent' (if too-often ill-defined) power to regulate its own docket to ensure that its process is not being abused." Khan, 172 B.R. at 622. Referring to the chapter 7 debtor's entitlement to "broad and unqualified debt relief" (id. at 622, n.17), the court concluded that "the law shelters the motivation to achieve that goal, with very few exceptions." Id. This court concludes that, given the specific reasons addressed above for denying dismissal under § 707(a), it would be entirely inappropriate for the court to dismiss the case based on some ill-defined inherent authority.

8. 14-29525-D-7 SANDRA ONKS — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
9-24-14 [5]

9. 13-29030-D-7 WILLIAM/JANET CHENG — MOTION FOR RELIEF FROM AUTOMATIC STAY
MRE-1
MONTROSE TRUST #118 VS.
10-7-14 [618]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that the debtors filed opposition to the relief from stay motion. However, the debtors received their discharge on September 5, 2014 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. No other opposition has been filed. Accordingly, 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.

10. 12-36631-D-7 CHENITA BRADLEY — MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)
GMR-4
9-26-14 [54]

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.

11. 12-36631-D-7 CHENITA BRADLEY — MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG TRUSTEE'S ATTORNEY(S)
HCS-2
10-8-14 [60]

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.

12. 11-33637-D-7 JEANETTE LIAS — MOTION TO DISMISS CASE AND/OR MOTION FOR VIOLATION OF AUTOMATIC STAY
PGM-1 — 10-2-14 [408]

Tentative ruling:

This is the debtor's motion to dismiss this chapter 7 case "and/or in the alternative for violation of automatic stay." Motion to Dismiss, filed Oct. 2, 2014 ("Mot."), at 1:17 (title of motion). The trustee has filed opposition, and the debtor has filed a reply. For the following reasons, the motion will be denied.

The crux of the motion is the debtor's allegation that there are no valid unsecured claims in this case except the U.S. Trustee's claim for $350, which the debtor is willing to pay. Thus, the debtor claims, the trustee proposes to administer the case solely for the benefit of secured creditors, himself, and his attorneys, in contravention of the policy expressed in the United States Trustee Handbook and the court's recent decision in In re Scoggins, 2014 Bankr. LEXIS 3857 (Bankr. E.D. Cal. Sept. 8, 2014).[1] To the extent the trustee proposes to pay the claims filed by Dyck-O'Neal, Claim Nos. 3 - 6, filed as unsecured, claims totaling $45,178 (the "Dyck-O'Neal claims"), the debtor contends the trustee and his counsel would be acting in violation of the debtor's discharge in a prior chapter 7 case, Case No. 08-20519 (the "2008 case"), and thus, in violation of the Bankruptcy Code - hence, the motion "in the alternative for violation of the automatic stay." (The debtor confuses violation of the automatic stay with violation of the discharge.)

It appears the debtor is mistaken about the Dyck-O'Neal claims. In the motion, the debtor characterized those claims as being for "unsecured interest on discharged claims," "unsecured interest on properties included in the chapter 7 discharge," and "unsecured interest on . . . pre-petition contracts . . . already discharged." Mot. at 5:6, 6:15-16, 6:18-19. As the trustee points out, however, the Dyck-O'Neal claims are for new monies loaned to the debtor after she filed the petition commencing the 2008 case; thus, the debts underlying the claims were not discharged by the debtor's discharge in that case. See § 727(b). The fact that the new monies loaned to the debtor were intended to be used and were used by the debtor to finance cure payments on mortgage loans the debtor had incurred prior to the commencement of the 2008 case does not change the fact that the monies were new monies loaned after the commencement of the case, and thus, the claims are based on post-petition debts not covered by the discharge in the case.

Attached to each of the Dyck-O'Neal proofs of claim is a copy of a HomeSaver Advance™ - Federal Truth-In-Lending Disclosure Statement and Promissory Note signed by the debtor on either July 31, 2008 (Claim Nos. 3 and 4) or July 29, 2008 (Claim Nos. 5 and 6), six months after the debtor commenced the 2008 case, on January 16, 2008. Directly below the title of the document is a property address - the documents attached to the four proofs of claim list four different addresses - all of properties owned by the debtor at the time. The disclosure portion of the document set forth the Annual Percentage Rate, Finance Charge, Amount Financed, Total of Payments, and Payment Schedule for the loan. The payment schedules for all four loans were the same, although the payment amounts differed. In each case, for the six months commencing October 1, 2008, the debtor was to make no payments, then, commencing April 1, 2009, the debtor was to make 173 equal monthly payments, and on September 1, 2023, one final payment in a slightly different amount. The promissory note portion of the document stated, "In return for a loan that I have received, I

promise to pay the Amount Financed shown above (this amount is also called 'Principal'), plus interest, to the order of the Lender." Case No. 11-33637, Claim No. 3, p. 3, ¶ 1. Also attached to each proof of claim is a HomeSaver Advance™ Closing Certification and Instruction signed by the debtor on the same dates as the disclosure statements/promissory notes, which stated, "Lender shall apply the proceeds of the Note to Borrower's delinquent first lien loan to fully reinstate such loan." Id. at p. 4, ¶ 2.[2] Clearly, these were new loans, although the proceeds were to be applied and were applied to cure the debtor's arrearages on loans she had incurred prior to the filing of the 2008 case.

The debtor responds to the trustee's argument with the proposition that the HomeSaver Advance documents were nothing more than the lender's attempt to "put a new face on an old debt" (Debtor's Reply, filed Oct. 28, 2014 ("Reply"), at 4:9-10) – a debt that was discharged in the 2008 case. The debtor points out that there were no reaffirmation agreements or loan modification agreements signed as to her mortgage loans, that the amounts financed pursuant to the HomeSaver Advance documents were applied to those mortgage loans, that the debtor was an obligor on those mortgage loans prior to January 16, 2008 (the date of commencement of the 2008 case), and that the Dyck-O'Neal proofs of claim all "relate to real properties." Id. at 2:8-9. She concludes from these facts that the Dyck-O'Neal claims are (1) secured claims, and (2) covered by the debtor's discharge in the 2008 case. Thus, in the debtor's view,

> the sophisticated creditor has written, and the chapter 7 Trustee apparently supports, a "new" agreement which does exactly what Congress knew such sophisticated creditors would do; make a end-run around the Bankruptcy Code by terming a "new" agreement" which does nothing more than cure the arrears which arose from the secured claim in the original 2008 chapter 7 discharge.

Id. at 4:1-7.

By using the words "cure the arrears," the debtor appears to acknowledge that new monies were loaned to her post-petition; that is, after the commencement of the 2008 case, which were, in turn, applied to the arrears on her pre-petition mortgage loans. She states, "the claims arose from not paying the claims which were part of the chapter 7, case #08-20519 . . . ." Reply, at 3:11-12. And again: "[h]ere, the claims have clearly arose from the arrears on real property which were listed and discharge[d] in the 2008 chapter 7." Id. at 5:4-6. It does not seem to matter to the debtor that she borrowed new monies post-petition. Instead, the fact that the new monies were applied to the arrears on pre-petition secured debts is enough (1) to make the obligation to repay the new monies a secured debt, not an unsecured debt, and (2) to bring the obligation to repay the new monies within the scope of the debtor's discharge in the 2008 case despite the fact that the new monies were borrowed post-petition.

The court cannot accept the first argument because the debtor has submitted no evidence her obligation to repay the new monies was agreed between her and the lender to be secured – either by the original deed of trust or by some new security instrument. The proofs of claim were filed as unsecured claims. The HomeSaver Advance documents contain no indication the debtor's obligation to repay the new monies was to be secured. And although the debtor originally listed the Dyck-O'Neal claims on her Schedule D in this case as secured by third position deeds of trust,[3] she later amended her schedules to remove the claims from Schedule D and add them to Schedule F, as unsecured claims. In short, the debtor has failed to demonstrate

that the Dyck-O'Neal claims are secured, and thus, that the trustee is seeking to administer the estate for the sole benefit of secured creditors, himself, and his attorneys.

The debtor's second argument – that the application of the newly-borrowed monies to the outstanding arrears on pre-petition debts rendered the obligation to repay the new monies subject to the discharge in the 2008 case – is unsupported by any legal authority. Further, the argument defies the fundamental notion that borrowing new monies after the filing of a bankruptcy petition with the undisclosed intention that the obligation to repay those monies would be covered by the discharge in the case would be fraud. In short, with exceptions not relevant here, a chapter 7 discharge "discharges the debtor from all debts that arose before the date of the order for relief . . . ." § 727(b) (emphasis added). Here, the debtor's debts for the new monies she borrowed after the date of the order for relief in the 2008 case were not discharged by her discharge in the 2008 case.

The debtor makes two additional arguments that are nothing more than red herrings. First, the debtor contends that the fact that the debts underlying the Dyck-O'Neal claims were not scheduled in the 2008 case is not relevant because that case was a "no-asset" case in which "no proof of claims were noticed to be filed . . . ." Reply at 5:16. The debtor cites Beezley v. California Land Title Co., 994 F.2d 1433 (9th Cir. 1993), in which the court held that in a "no asset, no bar date Chapter 7 case," an omitted debt is covered by a debtor's discharge. 994 F.2d at 1434. The problem with the debtor's argument is two-fold. First, the 2008 case was an asset case (see trustee's final report, filed Nov. 12, 2010, in Case No. 08-20519), and a claims bar date was set (see notice to file proof of claim, filed March 24, 2008). Thus, Beezley is not applicable, and debts not scheduled in time for the creditor to file a proof of claim were not discharged. See § 523(a)(3). Second, even if the case had been a no-asset no-claims-bar-date case, the Beezley holding does not expand the scope of dischargeable debts to include debts incurred post-petition.[4]

Finally, the debtor contends the court was not previously presented with the correct facts "due to attorney Holland [the debtor's original attorney in this case] being disbarred" (Mot. at 1:24); she adds that Holland "filed a flawed motion to reconsider which was denied by the Court." Id. at 2:15-16. She is referring to a motion to reconsider this court's earlier order by which this case, originally filed under chapter 11, was converted to chapter 7. The debtor charges Holland with "failing to note that the unsecured creditors did not exist as the Chapter 7 discharged all the unsecured claims." Id. at 2:20-22. This is the same argument the debtor advances unsuccessfully here. Had Holland advanced the argument earlier, it would have been equally unsuccessful. The fact that Holland was later disbarred is irrelevant.[5]

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

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1 The court cites this decision without a pincite, as the debtor has included none. The court presumes the debtor is relying only on the general sense of the decision.

2 Between the disclosure statement and the promissory note portions of the document are these words: "The entire Amount Financed will be applied to your mortgage account with us." Id. at p. 3, "Itemization of Amount Financed:".

3 The debtor actually listed only three of the Dyck-O'Neal claims – the claims for monies advanced to cure the arrearages on the three properties the debtor still owned when this case was commenced. The fourth, the property on Noble Street in Stockton, had been foreclosed on before the debtor commenced this case. The debtor did not schedule the Dyck-O'Neal claim for monies advanced on that property at all.

4 In fact, in construing § 727(b), the Beezley court stated that "unless section 523 dictates otherwise, every prepetition debt becomes discharged under section 727." 994 F.2d at 1435, J. O'Scannlain, concurring (emphasis added).

5 The debtor also suggests Holland's subsequent disbarment had something to do with the debtor's failure to file monthly operating reports while this case was a chapter 11 case. The suggestion is unsupported by any evidence.

13.	12-26444-D-7 HCS-7	MARY JUIP	MOTION TO SELL AND/OR MOTION TO PAY 10-8-14 [131]
14.	12-26444-D-7 HCS-8	MARY JUIP	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MARY JANE JUIP 10-8-14 [139]
15.	14-29547-D-7 FF-1	FRANCIS/ISABEL FAHRNER	MOTION TO COMPEL ABANDONMENT 9-30-14 [9]

16. 14-28849-D-7 DANIEL/ANGELA FLORENCE — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 10-1-14 [12]
WELLS FARGO BANK, N.A. VS.

Final ruling:

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

17. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO ESTABLISH PROCEDURES FOR AMENDMENT OF COMPLAINTS
12-2312 KBP-3 — 9-24-14 [103]
BURKART V. BISESSAR

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the defendant's motion to establish procedures for the filing of an amended complaint by the plaintiff in this adversary proceeding, who is also the trustee in the underlying chapter 7 case (the "trustee"). The trustee has filed opposition, and the defendant has filed a reply. For the following reasons, the court intends to grant the motion in part. The defendants in other adversary proceedings have filed motions identical to this one, which are on the court's calendar for this hearing date. This ruling applies to all such motions.

The trustee has previously filed motions to amend his complaints in some of the adversary proceedings to include transfers to the defendants the trustee alleged were newly discovered by him. As discovery has continued, the trustee has apparently discovered additional transfers to defendants in some of the adversary proceedings, and intends to amend his complaints to include those transfers. The present motion represents the defendants' attempt to establish a streamlined procedure for the trustee to include the additional transfers in his complaints without the parties having to go through the delays and incur the costs involved in filing and responding to formal motions to amend the complaints, while at the same time leaving the defendants with enough time to explore the allegations of the newly-disclosed transfers before the discovery bar date. The trustee opposes the motion, contending the defendant is trying to, in essence, advance the deadline for the trustee to complete his discovery from the present date of February 27, 2015, and trying to force the trustee to enter into a stipulation that is unacceptable to him. The court disagrees.

These adversary proceedings have been pending for over two years. The court observes that the parties have had difficulties agreeing on almost anything. Nevertheless, the trustee has had over two years to discover all the transfers he might seek to recover. It is not unreasonable that the defendants would want a deadline set by which the trustee would disclose all such transfers and, to the extent the defendants have requested the same in discovery, the evidentiary basis

for the recovery of the transfers, and would want that deadline set a reasonable amount of time in advance of the discovery bar date to permit the defendants to conduct their own discovery about the newly-disclosed transfers.

The trustee states in his opposition that "based on the initial allegations in the original complaints, as long as [the trustee] properly and timely discloses information about the payments in discovery, there should be no need to waste time and energy amending complaints to include additional payments uncovered through discovery." Trustee's Opp. at 3:3-6. The court agrees with this statement, but disagrees with the trustee's apparent interpretation of the word "timely." The court believes the defendants' proposal for a firm November 30, 2014 deadline for the trustee to identify all the transfers he seeks to recover in these adversary proceedings would constitute a "timely" disclosure. Should the trustee disagree, and should he therefore not identify the transfers by that time, he would bear a heavy burden to show he should be granted leave to amend his complaints at a later date.

The trustee's argument that the defendants have personal knowledge of the payments they received, and thus, should not be surprised to learn that the trustee has discovered them, is unconvincing. A defendant is entitled to conduct discovery, and to have a reasonable period of time in which to do so, with full knowledge of the plaintiff's allegations against him, even in situations where it appears the defendant should already have knowledge of the facts underlying those allegations. Indeed, in the majority of cases, the plaintiff probably believes the defendant knows the facts that gave rise to the complaint.

For the reasons stated, the court will grant the motion in part, and will, with two exceptions, approve the procedures set forth in the motion as procedures to be followed in lieu of the trustee filing motions to amend the complaints. The exceptions are these. First, the court will not require the trustee to comply with those procedures. Instead, the court will caution the trustee that it is difficult to imagine a scenario, given the length of time these proceedings have been pending, where leave to amend would be granted at this late date if the trustee fails to follow those procedures. Second, the court is not convinced that, as a condition to amending his complaints to include new transfers, the trustee should be required to produce the evidence on which he relies or will rely at the trial, unless that evidence falls within the scope of discovery now pending or previously issued by the defendants. Thus, the court will not adopt the procedures listed in paragraphs 2 and 3 of the motion, on page 5, and as to the revised "Exhibit A" referred to in paragraph 1, will not require it to include the trustee's documentary support. Instead, to the extent the defendants have issued prior discovery requests, the time for responding to which has now passed, that would cover the newly-disclosed transfers had they been included in the original complaints, the trustee will be required to provide answers to those requests, and to produce documents requested by the defendants, if any, by November 30, 2014. To the extent there are outstanding discovery requests by the defendants, the time for responding to which has not yet passed, that would cover the newly-disclosed transfers had they been included in the original complaints, the court will not address those requests in the order on this motion, but would simply encourage the trustee to comply with those discovery requests in a timely fashion.

The court will hear the matter.

18. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2320 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. ZOU 9-24-14 [90]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

19. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2368 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. PRASAD 9-24-14 [86]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

20. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2370 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. TORRES 9-24-14 [92]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

21. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2371 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. WU 9-24-14 [85]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

22. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2374 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. WANG 9-24-14 [89]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

23. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2387 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. SHARMA 9-24-14 [87]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

24. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2400 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. PRASAD 9-24-14 [87]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

25. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2401 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. BISESSAR 9-24-14 [94]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

26. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO ESTABLISH PROCEDURES
12-2418 KBP-3 — FOR AMENDMENT OF COMPLAINTS
BURKART V. TRACH — 9-24-14 [85]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

27. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO ESTABLISH PROCEDURES
12-2419 KBP-3 — FOR AMENDMENT OF COMPLAINTS
BURKART V. CHAND — 9-24-14 [87]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

28. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO ESTABLISH PROCEDURES
12-2429 KBP-3 — FOR AMENDMENT OF COMPLAINTS
BURKART V. STEELE — 9-24-14 [85]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

29. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED MOTION TO CONSOLIDATE
12-2430 GJH-1 — LEAD CASE 12-02430 WITH
BURKART V. SINGH — 12-02478, MOTION TO FILE
CONSOLIDATED AMENDED COMPLAINT
9-10-14 [76]

This matter will not be called before 10:45 a.m.

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), pursuant to Fed. R. Civ. P. 42 and 15(a)(2), incorporated herein by Fed. R. Bankr. P. 7042 and 7015, to consolidate this adversary proceeding with another one; that is, to consolidate AP Nos. 12-2430 and 12-2478, and for leave to file an amended complaint against the defendants in both

proceedings, James Singh and Rosebel Singh. The trustee has filed the same motion in both adversary proceedings; both are on the court's calendar for this hearing date. This ruling applies to both motions.

The motion to consolidate the two adversary proceedings is brought on the grounds that the two defendants are married to each other, that the transfers the trustee seeks to recover went into jointly-owned bank accounts, and thus, that the two proceedings share common issues of law and fact. The defendants do not oppose this portion of the motion. Thus, the motion will be granted as to this issue, and the adversary proceedings will be consolidated. AP No. 12-2430 will be designated as the lead case for purposes of the caption of documents to be filed in the case.

The trustee also seeks leave to file a consolidated amended complaint to add certain transfers the trustee alleges he has discovered since the time the original complaints were filed. The defendants do not oppose the motion to the extent the trustee seeks to add transfers for which, in the defendants' opinion, "there is an evidentiary basis." Defendants' Opp. at 2:14.[1] They do, however, oppose the motion to the extent the trustee seeks to add certain transfers made by way of cash deposits into the defendants' accounts that were, in the defendants' view, "from sources unrelated to Vincent Singh, for which the Defendants have provided documentation along with their sworn testimony to establish the lack of connection to Vincent Singh." Id. at 2:15-17. The defendants continue:

> The Defendants already have discovery requests pending asking for all documentation and information relating to all alleged transfers, which would include any new alleged transfers. The Trustee must disclose his evidentiary basis for any new alleged transfers. When the Trustee requested that the Defendants stipulate to the amendment of their complaints, the Defendants simply requested that the Trustee disclose the evidentiary basis for the inclusion of the alleged new cash transfers. The primary reason for their request is that they know they did not receive those alleged cash transfers from Vincent Singh, so they are necessarily curious as to what information the Trustee is relying upon to make such allegations and would need such information to adequately prepare a defense. The Trustee has declined to provide any evidentiary basis in support of the new allegations, or even to explain what discovery he would conduct to try to prove these allegations. Accordingly, the Defendants could not agree to stipulate to an amendment including these unsupportable allegations.

Id. at 3:8-19.

In support of this position, the defendants went so far as to "point out" to the trustee's counsel his obligations under Fed. R. Bankr. P. 9011, suggesting that if he filed an amended complaint that included the cash deposits, but without any evidentiary basis, he would be violating that rule. In the interest of keeping costs down, the defendants add, they agreed to waive any claim they might have under Rule 9011 if the trustee withdrew his motion, and they now "expressly reserve all rights under Rule 9011 because the Trustee has required them to respond to the Motion." Opp. at 4:11-12. So far as the present motion is concerned, the defendants oppose "the inclusion of additional transfers in an amended complaint for which the Trustee has no evidentiary basis and for which he is unwilling to even explain the source of information giving rise to his new allegations." Id. at 3:1-4.

The court does not agree that the trustee should be required to provide the evidence on which he relies or will rely at trial as a condition to amending the complaint to include the cash deposits. The means for the parties to discover each other's evidence is the discovery process, not the pleading process. If the trustee has failed to comply with the defendants' discovery requests, they have remedies for that. Their remedy is not denial of the trustee's motion to amend his complaint. If the defendants believe the trustee would be violating Rule 9011 by including the cash deposits in his complaint, they have a remedy for that too – the remedy is under Rule 9011, not via denial of the motion to amend the complaint. In fact, it is ironic that, in agreeing to the trustee including the other 22 transfers in the amended complaint, the defendants stated as follows: "The Defendants, of course, do not admit that any of these transfers are avoidable or recoverable, and the parties will litigate the Trustee's prima facie case and the Defendants' defenses at the time of trial with respect to these transfers." Opp. at 5, n.2. Just so with the transfers the trustee seeks to add to his complaint.

Citing case law for the proposition that if an amendment would be futile, leave to amend should be denied, the defendants contend that if the trustee has no evidentiary support for his allegations as to the cash deposits, and is unable to articulate where he might find such support, then the new allegations "are necessarily futile and amendment is not appropriate." Opp. at 4:4. As the trustee points out, the defendants' theory does not comport with the law on amendment of pleadings. "The test for futility 'is identical to the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6).'" Sarkizi v. Graham Packaging Co., 2014 U.S. Dist. LEXIS 76275, at *17 (E.D. Cal. June 3, 2014), quoting Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). Thus, the trustee is not required to provide the evidentiary support for his allegations in order to prevail on a motion for leave to amend.

Complicating matters, however, the trustee added in his reply to the defendants' opposition that any evidence he has supporting the new allegations is attorney work-product in the form of witness interviews. This prompted the defendants to file a supplemental opposition analyzing what is and what is not attorney work-product and citing case law on the duty to disclose the identity of one's witnesses. The defendants conclude by requesting "that the Trustee disclose the basis for his allegations (the mere identification of any such witnesses would have been sufficient), rather than hiding behind an inappropriate assertion of the work product doctrine to try to place the Defendants at a disadvantage in the litigation." Supp. Opp. at 4:26-5:1. Again, the issue on this motion is not whether the trustee has inappropriately withheld responses to discovery requests, and it is not whether the trustee will ultimately be able to prove his allegations regarding the cash deposits. To conclude, the defendants have failed to demonstrate that the proposed amended complaint does not contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. Thus, they have failed to demonstrate that the amendment would be futile.

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

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1 Thus, they agree to the trustee's adding 22 transfers to his complaint.

30. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2430 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. SINGH 9-24-14 [97]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

31. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2434 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. REDDY 9-24-14 [85]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

32. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2446 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. BELOLI 9-24-14 [90]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

33. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2448 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. SINGH 9-24-14 [84]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

34. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2461 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. WENG 9-24-14 [82]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

35. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2469 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. ALLEN 9-24-14 [42]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

36. 10-42050-D-7 VINCENT/MALANIE SINGH CONTINUED MOTION TO CONSOLIDATE
12-2478 GJH-1 LEAD CASE 12-02430 WITH
BURKART V. SINGH 12-02478 AND MOTION TO FILE
CONSOLIDATED AMENDED COMPLAINT
9-10-14 [81]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 29.

37. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO ESTABLISH PROCEDURES
12-2478 KBP-3 FOR AMENDMENT OF COMPLAINTS
BURKART V. SINGH 9-24-14 [94]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

38. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO ESTABLISH PROCEDURES
12-2483 KBP-3 — FOR AMENDMENT OF COMPLAINTS
BURKART V. NARAYAN — 9-24-14 [81]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

39. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO ESTABLISH PROCEDURES
12-2486 KBP-3 — FOR AMENDMENT OF COMPLAINTS
BURKART V. PRASAD — 9-24-14 [80]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

40. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO ESTABLISH PROCEDURES
12-2496 KBP-3 — FOR AMENDMENT OF COMPLAINTS
BURKART V. MORA — 9-24-14 [82]

This matter will not be called before 10:45 a.m.

See ruling for Item No. 17.

41. 14-29358-D-7 DEBORAH WILLIAMS — MOTION FOR RELIEF FROM
VVF-1 — AUTOMATIC STAY AND/OR MOTION
AMERICAN HONDA FINANCE — FOR ADEQUATE PROTECTION
CORPORATION VS. — 9-30-14 [9]

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 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.

42. 09-29162-D-11 SK FOODS, L.P.
SH-276

CONTINUED OMNIBUS OBJECTION TO CLAIMS
7-16-14 [4975]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that the service issue identified at the initial hearing has been corrected and 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 omnibus objection to claims. Counsel for the trustee is to submit an appropriate order. No appearance is necessary.

43. 09-29162-D-11 SK FOODS, L.P.
SH-284

CONTINUED OBJECTION TO CLAIM OF STOUGHTON DAVIDSON ACCOUNTANCY CORPORATION, CLAIM NUMBER 123
7-22-14 [5021]

Final ruling:

The hearing on this objection has been continued to December 3, 2014 at 10:00 a.m. per stipulated order entered October 21, 2014. No appearance is necessary on November 5, 2014.

44. 13-35762-D-12 JOSE DASILVA
MF-13

MOTION FOR COMPENSATION FOR ATHERTON & ASSOCIATES, LLP, ACCOUNTANT(S)
10-8-14 [168]

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.

45. 13-28964-D-7 ANDREW BOLAM
BHT-1
CHRISTIANA TRUST VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-6-14 [27]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on December 20, 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 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.

46. 14-29170-D-7 VAUNA KRACHT
RCO-1
FIFTH THIRD MORTGAGE COMPANY
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
10-7-14 [10]

Final ruling:

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

47. 13-23371-D-11 JUAN/MARGARITA RAMIREZ
TCS-10

MOTION FOR AUTHORIZATION TO INCLUDE LATE BALLOTS
10-1-14 [227]

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

48. 13-23371-D-11 JUAN/MARGARITA RAMIREZ
TCS-8

CONTINUED CONFIRMATION OF SECOND PLAN OF REORGANIZATION FILED BY DEBTORS
12-24-13 [138]

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

49. 13-23371-D-11 JUAN/MARGARITA RAMIREZ
TCS-9

MOTION FOR AUTHORIZATION TO ALLOW SECURED CREDITOR TO CHANGE IT'S VOTE FROM NO TO YES
10-1-14 [224]

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

50. 14-25671-D-7 ADS-2 — ROY/PAULA CHITWOOD — MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 10-7-14 [19]

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 court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

51. 14-27771-D-7 LES-1 — SHANE/ALEXANDRA GWIAZDOWSKI — MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC 9-24-14 [11]

Final ruling:

This is the debtors' motion to avoid an alleged judicial lien held Portfolio Recovery Associates, LLC ("Portfolio"). The motion will be denied for the following reasons. First, the moving parties served the motion but not the notice of hearing. Second, the moving parties failed to serve Portfolio in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Portfolio at a street address with no attention line, whereas 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. Fed. R. Bankr. P. 7004(b)(3).

Third, the moving parties failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate that the moving parties are 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) (emphasis added). As regards the alleged judicial lien, the motion states only that the debtors seek to avoid Portfolio's lien on certain identified real property in Rio Linda, California (which is in Sacramento County), and that "[t]he above-mentioned lien is a judicial lien recorded in Sacramento Superior Court under case number 34-2014-00160984." Motion to Avoid Lien, filed Sept. 24, 2014, at 1:20-21.

Under California law, a judicial lien on real property is created by the recording of an abstract of judgment with the county recorder of the county in which the property is located (Cal. Code Civ. Proc. §§ 697.310 (a), 697.340(a)), not by the recording of a lien in the Superior Court. Here, the debtors have submitted no evidence that Portfolio recorded an abstract of judgment with the county recorder of Sacramento County. Thus, there is no evidence there is a lien here that is subject to avoidance.

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

52. 14-29471-D-7 NICHOLAS IORG — AMENDED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
10-7-14 [26]

53. 14-29473-D-7 LUPITA BELL
RCO-1
FEDERAL NATIONAL MORTGAGE ASSOCIATION VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
10-7-14 [25]

Final ruling:

This case was dismissed on October 10, 2014, and as such, the automatic stay is no longer in effect. As a result the motion will be denied by minute order as moot. No appearance is necessary.

54. 14-27385-D-7 DORIS SPARROW
GW-1 — MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
10-1-14 [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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

55. 14-21786-D-7 CARENDA MARTIN
PJE-1 — MOTION TO CONVERT CASE TO CHAPTER 13
10-8-14 [22]

Tentative ruling:

This is the debtor's motion to convert this chapter 7 case to a chapter 13 case. The trustee has filed opposition. For the following reasons, the motion will be denied.

The debtor commenced this case as a chapter 7 case on February 25, 2014. The debtor was granted a chapter 7 discharge on June 10, 2014. Four months later, on October 8, 2014, the debtor filed this motion, stating that her purpose is "to protect her personal residence." Motion to Convert, filed Oct. 8, 2014, at 1:18.[1] She states: "At the time I filed my case it was my sincere belief that my residence was the separate property of my spouse." Decl. at 1:22-23. Thus, where required to

disclose all her interests in real property, on her Schedule A, the debtor answered "None." On her Schedule B, under contingent and noncontingent interests in the estate of a decedent, the debtor stated, "Non debtor spouse inherited home. Property is separate property per California Family Code §§770(a)(2)." The debtor valued her interest in this asset at $0. The trustee, however, contends the debtor and her husband utilized community assets to purchase from the debtor's husband's mother an interest in the probate estate of the husband's grandmother, that the probate estate owns the residence, and therefore, that the residence is property of the bankruptcy estate. Documents obtained from the debtor and filed by the trustee as exhibits tend to support his position. The parties have not indicated whether there are any liens against the residence – the debtor did not list any liens on her Schedule D, maybe because there are none or maybe because the debtor is not an obligor on the debts secured by the lien or liens. On Schedule J, the debtor listed her rent or mortgage payment as $0.

The trustee opposes the motion on the ground that the debtor has acted in bad faith – first, by failing to schedule an interest in the real property and then by offering varying explanations of the status of ownership of the property and her interest in it. The court is more concerned, however, with the fact that the debtor has received a discharge of all the debts listed on her schedules, which are, if the schedules are complete and accurate, all of the debtor's debts. The debtor listed only one debt on Schedule D – a car loan, and listed general unsecured debts totaling $56,650. She listed no priority debts. The car lender has not filed a proof of claim; thus, the court does not know whether the debtor is current on that loan. In short, except for curing a delinquency on that loan, if one exists, it is difficult to discern any legitimate purpose to be served by converting the case to chapter 13. In essence, the debtor would be proposing a plan to repay debts on which her legal obligation has already been discharged. The debtor has not suggested that a confirmed plan would revive her legal obligation to repay the discharged debts or that the court would even have the power to confirm a plan, and thus make it binding on the parties pursuant to § 1327(a), given that the debtor has received a discharge of all the debts that would be included in such a plan.

Further, in terms of the good faith analysis called for by Marrama v. Citizens Bank, 549 U.S. 365, 371 (2007), the court notes that the debtor made significant changes to her Schedule J at the time she filed this motion. When she filed this case, in February of this year, the debtor listed household expenses totaling $5,083 which, as against net income of $4,888, left her with monthly net income of <$195>, a negative number, thus implying if not representing outright that she had no ability to repay any of her debts, at least not any of her unsecured debts. (The debtor included a car payment of $335 on her Schedule J.) When asked on Schedule J whether she expected an increase or decrease in her expenses within the following year, the debtor answered "No."

Now, however, on an amended Schedule J, the debtor lists her expenses for phone/Internet/cellular, food, childcare and children's education, clothing and laundry, personal care, medical and dental, transportation, charitable contributions, and pet care as reduced by a total of $855 per month. She has also removed from her Schedule J the $335 car payment, presumably on the theory that it would be paid through her chapter 13 plan. She has thereby reduced her expenses by a total of $1,190, bringing her monthly net income to $995, presumably to support her contention that she has disposable income from which to fund a plan. In fact, in the motion, she states her unsecured creditors would be paid 100% in a chapter 13 case. These significant changes in the debtor's expenses, made only when it suited her own purpose, undercut her good faith in filing her original or amended schedules

or both. A debtor's schedules are to be based on reality; they are not intended to be completed in such a way as to enable the debtor to achieve the particular result he or she is seeking at the time they are filed. The court notes also that the debtor was required to include information about her non-filing spouse on her Schedule I,[2] yet she failed to do so. She did not indicate whether he is employed or not, and if so, his occupation and employer's name and address, and she failed to include his income. She did not use zeroes in the column for her non-filing spouse; she simply left the lines blank. On her Schedule J, she listed two dependents – a son and a daughter, and stated that her expenses do not include expenses of people other than herself and her dependents. Thus, the listed expenses do not include her husband's share of the expenses and, assuming the debtor's husband lives in the household, which appears to be the case, the schedules do not present an accurate picture of the household's finances.[3]

The court concludes that the motion to convert is not filed in good faith in that the debtor has no need for chapter 13 relief in order to give her time to repay all or a portion of her debts, those debts having been discharged, that she delayed taking action to convert the case until after her discharge had been entered, that she valued at $0 her interest in the residence and probate estate in one or both of which it strongly appears she had a community property interest at the time the case was filed, and that – if her amended schedules are to be believed, she apparently failed to accurately schedule her household expenses at the outset of the case – in schedules on which the parties relied in not seeking to dismiss her chapter 7 case under § 707(b) of the Code. By these actions, the debtor has forfeited her right to have the case converted to chapter 13, and the motion will be denied.

The court will hear the matter.

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1 In support of the motion, the debtor testifies: "I would have filed this motion earlier but was under the impression we would be able to reach a settlement with the trustee." Debtor's Declaration, filed Oct. 8, 2014 ("Decl."), at 1:28-2:1.

2 "If you are married and not filing jointly, and your spouse is living with you, include information about your spouse." Official Form 6I.

3 Further, where required on her Statement of Financial Affairs to identify a spouse or former spouse who resides or resided with the debtor in a community property state within the prior eight years, the debtor answered "None.

56.	14-25094-D-7	BRIAN PORTER	MOTION FOR RELIEF FROM
	APN-1		AUTOMATIC STAY
	WELLS FARGO BANK, N.A. VS.		10-6-14 [54]

Final ruling:

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

57. 14-29294-D-7 LISA WHITE — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 10-2-14 [14]
MUFG UNION BANK, N.A. VS.

Final ruling:

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

58. 14-25816-D-11 DEEPAL WANNAKUWATTE — CONTINUED MOTION TO EMPLOY DAVID A. HONIG AS ATTORNEY
JC-1 — 10-1-14 [221]

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

59. 14-25820-D-11 INTERNATIONAL MANUFACTURING GROUP, INC. — CONTINUED MOTION TO EMPLOY DAVID A. HONIG AS ATTORNEY
JC-1 — 10-1-14 [263]

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

60. 14-22526-D-7 DAVID JONES — MOTION TO COMPEL ABANDONMENT
PLC-1 — 10-15-14 [51]

Final ruling:

This is the debtor's motion to compel the trustee to abandon certain real property. The motion will be denied for the following reasons: (1) the "attached list" referred to in the proof of service is not attached; thus, there is no evidence of service on anyone; and (2) the proof of service is not signed under oath as to the facts of service, as required by 28 U.S.C. § 1746. The declarant "certif[ies] under penalty of perjury" that he is over the age of 18 and not a party to the action. He then certifies – not under penalty of perjury – the facts of service – the date and manner of service, the documents served, and the parties served. As a result of these service defects, the motion will be denied by minute order. No appearance is necessary.

61. 12-34034-D-7 BLG-2 — JAMES/KRISTIE MATHEWS — MOTION TO AVOID LIEN OF CITIBANK, NA 10-22-14 [49]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Citibank, N.A. (the "Bank"). The motion will be denied for the following reasons: (1) there is no proof of service on file; and (2) the notice of hearing, although titled Notice of Hearing on Motion to Avoid Lien, states that the debtor has moved the court for an order imposing the automatic stay, and asserts that the current case is filed in good faith. Further, the notice of hearing does not identify the party against which the motion is directed.

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

62. 14-25148-D-11 MF-18 — HENRY TOSTA — MOTION FOR APPROVAL OF ENTRY INTO NEW LEASE 10-15-14 [244]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

63. 14-28794-D-7 LBG-1 — RICHARD/JANELEE CRANDALL — MOTION TO COMPEL ABANDONMENT 10-15-14 [15]

Final ruling:

This is the debtors' motion to compel the trustee to abandon certain identified real property. The motion will be denied for the following reasons. First, the notice of hearing does not state the name of the judge hearing the motion or the courtroom in which the hearing will be held, as required by LBR 9014-1(d)(2). Second, the moving parties gave only 21 days' notice of the hearing; thus, they were required to advise potential respondents that no written opposition was required. LBR 9014-1(f)(2)(C) and (d)(3). The notice of hearing does state that; however, it also states: "If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it before the date of the hearing on this motion. You must also mail a copy of any written and filed response to the Debtors' attorney, . . . [the trustee and the U.S. Trustee] . . ." (Notice of Hearing, filed Oct. 15, 2014, at 2:7-13), adding that "[i]f you or your attorney do not take these steps, the Court may decide that you do not oppose this action and may grant the Motion." Id. at 2:14-15. These steps are not required by the local rules for a motion brought under LBR 9014-1(f)(2). These directions may well have discouraged potential respondents from appearing at the hearing, and should not have been included in the notice.

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